

1 C. D. Michel - S.B.N. 144258  
Clinton B. Monfort - S.B.N. 255609  
2 Sean A. Brady - S.B.N. 262007  
Anna M. Barvir - S.B.N. 268728  
3 MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Boulevard, Suite 200  
4 Long Beach, CA 90802  
Telephone: 562-216-4444  
5 Facsimile: 562-216-4445  
Email: cmichel@michellawyers.com  
6

7 Attorneys for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 SAN FRANCISCO VETERAN	}	<b>CASE NO.</b>
12 POLICE OFFICERS		
13 ASSOCIATION, LARRY	}	<b>COMPLAINT FOR DECLARATORY</b>
14 BARSETTI, RAINERIO		
15 GRANADOS, ARTHUR RITCHIE,	}	<b>AND INJUNCTIVE RELIEF</b>
16 and RANDALL LOW,		
17 Plaintiffs	}	SFPC § 619: Violation of U.S. Const.,
18 vs.		Amend.'s II & XIV
19 THE CITY AND COUNTY OF SAN	}	
20 FRANCISCO, THE MAYOR OF		
21 SAN FRANCISCO, EDWIN LEE in	}	
22 his official capacity, THE CHIEF OF		
23 THE SAN FRANCISCO POLICE	}	
24 DEPARTMENT, GREG SUHR, in		
25 his official capacity, and DOES 1-10,	}	
26 Defendants.		

27 Plaintiffs, by and through their undersigned attorneys, bring this Complaint  
28 for Declaratory and Injunctive Relief against the above-named Defendants, their  
employees, agents, and successors in office, and in support thereof allege the  
following upon information and belief:

1 **INTRODUCTION**

2 1. Plaintiffs bring this suit to challenge the constitutionality of San  
3 Francisco Police Code Section 619 (“Section 619”), enacted and enforced by  
4 Defendant City and County of San Francisco, its Mayor, Edwin Lee, and its Chief  
5 of Police, Greg Suhr (collectively, “the City”). Section 619 violates Plaintiffs’  
6 rights to keep and bear arms under the Second Amendment to the United States  
7 Constitution.

8 2. Section 619 bans the possession of common, standard-capacity  
9 “ammunition feeding devices” or “magazines” capable of holding more than ten  
10 rounds. Magazines prohibited by Section 619 are in widespread, common use  
11 throughout the United States. These magazines are typically possessed by law-  
12 abiding citizens for lawful purposes, including in-home self defense.

13 3. The City’s ban on the very possession of these magazines directly  
14 violates Plaintiffs’ rights to keep and bear arms enshrined by the Second  
15 Amendment.

16 4. Accordingly, Plaintiffs seek declaratory and injunctive relief to invalidate  
17 and enjoin the City’s enforcement of Section 619.

18 **JURISDICTION AND VENUE**

19 5. The Court has original jurisdiction of this civil action pursuant to 28  
20 U.S.C. § 1331 because the action arises under the Constitution and laws of the  
21 United States, thus raising federal questions. The Court also has jurisdiction under  
22 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 in that this action seeks to redress the  
23 deprivation, under color of the laws, statutes, ordinances, regulations, customs and  
24 usages of the State of California and political subdivisions thereof, of rights,  
25 privileges or immunities secured by the United States Constitution and by Acts of  
26 Congress.  
27

28 6. Plaintiffs’ claims for declaratory and injunctive relief are authorized by

1 28 U.S.C. §§ 2201 and 2202, respectively.  
2

3 **INTRADISTRICT ASSIGNMENT**

4 7. Pursuant to Civil Local Rule 3-2(c), this action arises in the County of  
5 San Francisco because a substantial part of the events or omissions giving rise to  
6 the claims occurred in that County. Pursuant to Civil Local Rule 3-2(d), this action  
7 should be assigned to either the San Francisco or Oakland Division.  
8

9 **PARTIES**

10 8. Plaintiff Larry Barsetti is a resident of San Francisco. He is a retired San  
11 Francisco police officer and Secretary of the San Francisco Veteran Police Officers  
12 Association. Plaintiff Barsetti is a law-abiding citizen who is not prohibited from  
13 owning or possessing firearms under state or federal law. He currently owns  
14 magazines prohibited by Section 619 capable of accepting more than ten rounds  
15 that were lawfully acquired in accordance with state and federal law. Due to the  
16 City's enactment of Section 619, Plaintiff Barsetti is prohibited from possessing  
17 these magazines in the City and County of San Francisco. If section 619 is not  
18 enjoined, Plaintiff Barsetti will comply with this section to avoid prosecution and  
19 will not possess his magazines within City and County limits. But for the City's  
20 enactment and ongoing enforcement of Section 619, Plaintiff Barsetti would  
21 immediately and continuously possess these magazines within the City and County  
22 for lawful purposes, including in-home self-defense.

23 9. Plaintiff Rainerio Granados is a resident of San Francisco. He is a law-  
24 abiding citizen who is not prohibited from owning or possessing firearms under  
25 state or federal law. Plaintiff Granados currently owns magazines prohibited by  
26 Section 619 capable of accepting more than ten rounds that were lawfully acquired  
27 in accordance with state and federal law. Due to the City's enactment of Section  
28 619, Plaintiff Granados is prohibited from possessing these magazines in the City

1 and County of San Francisco. If Section 619 is not enjoined, Plaintiff Granados  
2 will comply with this section to avoid prosecution and will not possess his  
3 magazines within City and County limits. But for the City's enactment and  
4 ongoing enforcement of Section 619, Plaintiff Granados would immediately and  
5 continuously possess these magazines within the City and County for lawful  
6 purposes, including in-home self-defense.

7 10. Plaintiff Arthur Ritchie is a resident of San Francisco who retired as a  
8 Master Chief in the United States Navy after twenty-two years of service. He is a  
9 law-abiding citizen who is not prohibited from owning or possessing firearms  
10 under state or federal law. Plaintiff Ritchie currently owns magazines capable of  
11 accepting more than ten rounds that were lawfully acquired in accordance with  
12 state and federal law. Due to the City's enactment of Section 619, Plaintiff Ritchie  
13 is prohibited from possessing these magazines in the City and County of San  
14 Francisco. If Section 619 is not enjoined, Plaintiff Ritchie will comply with this  
15 section to avoid prosecution and will not possess his magazines within City and  
16 County limits. But for the City's enactment and ongoing enforcement of Section  
17 619, Plaintiff Ritchie would immediately and continuously possess these  
18 magazines within the City and County for lawful purposes, including in-home self-  
19 defense.

20 11. Plaintiff Randall L. Low is a resident of San Francisco. He is a  
21 law-abiding citizen who is not prohibited from owning or possessing firearms  
22 under state or federal law. Plaintiff Low currently owns magazines prohibited by  
23 Section 619 capable of accepting more than ten rounds that were lawfully acquired  
24 in accordance with state and federal law. Due to the City's enactment of Section  
25 619, Plaintiff Low is prohibited from possessing these magazines in the City and  
26 County of San Francisco. If Section 619 is not enjoined, Plaintiff Low will comply  
27 with this section to avoid prosecution and will not possess his magazines within  
28 City and County limits. But for the City's enactment and ongoing enforcement of

1 Section 619, Plaintiff Low would immediately and continuously possess these  
2 magazines within the City and County for lawful purposes, including in-home  
3 self-defense.

4 12. Each of the individual Plaintiffs identified above are residents and  
5 taxpayers of the City and County of San Francisco who presently intend to possess  
6 their lawfully-acquired, common magazines capable of holding more than ten  
7 rounds within the City and County as is their right under the Second Amendment to  
8 the United States Constitution – a right the City now denies them through the  
9 enactment and enforcement of Section 619. Plaintiffs fear prosecution under  
10 Section 619 if they possess magazines prohibited by this section within the City  
11 and County of San Francisco.

12 13. Each of the individual Plaintiffs presently intend to and forthwith would  
13 possess their magazines prohibited by Section 619 within the City and County of  
14 San Francisco if this Court declared Section 619 void and unenforceable or  
15 otherwise enjoined its enforcement.

16 14. Plaintiff San Francisco Veteran Police Officers Association  
17 (“SFVPOA”) is an organization that represents the interests of veteran police  
18 officers in the City and County of San Francisco, including the exercise of their  
19 members’ rights to keep and bear arms under the Second Amendment. Members of  
20 the SFVPOA are law-abiding citizens who are not prohibited from owning firearms  
21 under state or federal law. Many of these veteran police officers live in the City  
22 and County of San Francisco and own magazines prohibited by Section 619 that  
23 were lawfully acquired in accordance with state and federal law, including Plaintiff  
24 Larry Barsetti. Due to the City’s enactment of Section 619, SFVPOA members are  
25 prohibited from possessing these magazines in the City and County of San  
26 Francisco. If Section 619 is not enjoined, SFVPOA members will comply with this  
27 section to avoid prosecution and will not possess their prohibited magazines within  
28 City and County limits. But for the City’s enactment and ongoing enforcement of

1 Section 619, these members would immediately and continuously possess their  
2 magazines within the City and County for lawful purposes, including in-home self-  
3 defense.

4 15. SFVPOA's individual members, like the named individual Plaintiffs, are  
5 residents and taxpayers of the City and County of San Francisco who have an  
6 interest in possessing common magazines that are protected by the Second  
7 Amendment, but are prevented from doing so by the City's enactment and  
8 enforcement of section 619; thus, the members have standing to seek declaratory  
9 and injunctive relief to halt enforcement of Section 619; the interests of these  
10 members are germane to their respective associations' purposes; and neither the  
11 claims asserted nor the relief requested herein requires that these members  
12 participate in this lawsuit individually.

13 16. SFVPOA members presently intend to and forthwith would possess  
14 their magazines prohibited by Section 619 within the City and County of San  
15 Francisco if this Court declared Section 619 void and unenforceable or otherwise  
16 enjoined its enforcement.

17 17. Defendant City and County of San Francisco is a municipal corporation  
18 acting as such by and under state law. Defendant City and County of San  
19 Francisco is a "person" acting under color of state law within the meaning of 42  
20 U.S.C. § 1983, and is principally responsible for implementing and enforcing  
21 Section 619.

22 18. Defendant Lee is the current Mayor and chief executive officer of  
23 Defendant City and County of San Francisco. Defendant Lee is an agent, servant,  
24 and/or employee of Defendant City and County of San Francisco, acting under  
25 color of state law as that phrase is used in 42 U.S.C. § 1983, and is responsible for  
26 enforcing Section 619. Defendant Lee is sued in his official capacity.

27 19. Defendant Suhr is the Chief of Police of Defendant City and County of  
28 San Francisco. Defendant Suhr is an agent, servant, and/or employee of Defendant

1 City and County of San Francisco, acting under color of state law as that phrase is  
2 used in 42 U.S.C. § 1983, and is responsible for enforcing Section 619. Defendant  
3 Suhr is sued in his official capacity.

## 4 5 **GENERAL ALLEGATIONS**

### 6 **San Francisco Police Code Section 619:**

7 20. On or about November 8, 2013, Defendant Lee signed into law San  
8 Francisco Police Code Section 619. (A copy of San Francisco Police Code Section  
9 619 is attached hereto as Exhibit “A” and incorporated herein.)

10 21. Section 619 takes effect on December 8, 2014, thirty (30) days after the  
11 date that it was signed into law.

12 22. Section 619 prohibits any person, corporation, or other entity in the City  
13 and County of San Francisco from possessing ammunition magazines it refers to as  
14 “large-capacity magazines.”

15 23. Section 619 defines a “large-capacity magazine” as an ammunition  
16 feeding device with the capacity to accept more than ten rounds.

17 24. Section 619 provides that any person who possesses any magazines  
18 prohibited by Section 619 prior to its effective date shall have ninety (90) days to  
19 cease possessing those magazines within the City and County of San Francisco.

20 25. Pursuant to Section 619, any person who is in lawful possession of any  
21 “large-capacity magazines” prior to December 8, 2013 must, on or before March 8,  
22 2014, surrender such magazines to law enforcement for destruction, remove them  
23 from the City and County of San Francisco, or transfer them to a licensed firearms  
24 dealer.

25 26. Section 619 identifies a number of exceptions, including but not limited  
26 to possession by military, possession by law enforcement, as well possession by  
27 persons using “large-capacity magazines” for entertainment events.

28 27. Section 619 does not include an exception for possession by law-

1 abiding citizens for self-defense.

2 28. Section 619 does not include an exception for law-abiding retired police  
3 officers. Retired police officers are forced to dispose of their lawfully-acquired,  
4 common magazines with capacities of more than ten rounds that are prohibited by  
5 Section 619, as set forth in that section and described in paragraph 25 of this  
6 Complaint.

7 29. The City has never informed Plaintiffs or the public that it does not  
8 intend to enforce Section 619.

9 30. The City has no documents indicating that it does not intend to enforce  
10 Section 619.

11 **Standard-Capacity Magazines Prohibited by Section 619**  
12 **Are Protected Under the Second Amendment:**

13 31. On June 26, 2008, the United States Supreme Court confirmed in  
14 *District of Columbia v. Heller*, 128 S. Ct. 2783, 2816 (2008) that arms “typically  
15 possessed by law-abiding citizens for lawful purposes” or those “in common use”  
16 are protected under the Second Amendment.

17 32. On June 28, 2010, the Supreme Court confirmed that Second  
18 Amendment protections are fully applicable to state and local governments by  
19 virtue of the Fourteenth Amendment. *McDonald v. City of Chicago*, 130 S. Ct.  
20 3020 (2010).

21 33. In the wake of *Heller* and *McDonald*, courts have evaluated Second  
22 Amendment protections for ammunition, magazines, and firearm components  
23 pursuant to the Supreme Court’s “common use” standard described in *Heller*.

24 34. Magazines that are in common use for lawful purposes are protected by  
25 the Second Amendment.

26 35. A standard-capacity magazine is one containing the number of  
27 cartridges the firearm was designed to operate with. Increased-capacity magazines  
28 and feeding devices are those holding more cartridges than the firearm was



1 originally designed to use. Reduced, low-capacity magazines are those whose  
2 capacity is artificially reduced from that which the firearm was originally designed  
3 or intended to use.

4 36. Firearms with magazines capable of holding more than ten rounds can  
5 be traced back to the era of ratification of the Fourteenth Amendment.

6 37. Millions of firearms that have been sold in the United States come stock  
7 from the factory with magazines capable of holding more than ten rounds. These  
8 include, but are not limited to: the Glock 17 (designed to hold 17 rounds), the  
9 Beretta 92F (designed to hold 15 rounds), the M1 Carbine (designed to hold 15 or  
10 30 rounds), and the Ruger Mini-14 (designed to hold 5 or 20 rounds).

11 38. Notwithstanding the City’s description of the prohibited magazines as  
12 being “large-capacity,” magazines with capacities of more than ten rounds are  
13 standard for many common handguns and long guns. For example, standard  
14 capacity for firearms chambered in 9 mm is 15-17 rounds; standard capacity for  
15 firearms chambered in .40 S&W is 15 rounds; standard capacity for firearms  
16 chambered in .45 ACP is 7-13 rounds; standard capacity for firearms chambered in  
17 5.56 mm is 20-30 rounds; and standard capacity for firearms chambered in .308 is  
18 20 rounds.

19 39. Millions of standard-capacity magazines capable of holding more than  
20 ten rounds that are prohibited by Section 619 are currently possessed by law-  
21 abiding citizens for a variety of lawful purposes in the United States, including  
22 target practice, shooting competitions, and hunting.

23 40. Millions of standard-capacity magazines capable of holding more than  
24 ten rounds that are prohibited under Section 619 are currently possessed by law-  
25 abiding citizens for the core lawful purpose of self-defense, including in-home self-  
26 defense.

27 41. Self-defense is the “central component” of the Second Amendment right  
28 to keep and bear arms that is at its zenith within the home.

1           42. Millions of individual, law-abiding American citizens are currently in  
2 possession of standard-capacity magazines that are capable of holding more than  
3 ten rounds, that are now banned by Section 619.

4           43. Standard-capacity magazines that are prohibited by Section 619 are  
5 typically-possessed by law-abiding citizens for lawful purposes, including in-home  
6 self-defense.

7           44. Standard-capacity magazines capable of holding more than ten rounds  
8 that are prohibited by Section 619 are not “dangerous and unusual.”

9           45. The majority of pistol magazines currently manufactured in the United  
10 States have capacities of greater than ten rounds.

11           46. There are currently tens of millions of rifle magazines that are lawfully-  
12 possessed in the United States with capacities of more than ten rounds.

13           47. The use of standard-capacity magazines with capacities of more than ten  
14 rounds increase the likelihood that a law-abiding citizen will survive a criminal  
15 attack.

16           48. Section 619’s ban on the possession of standard-capacity magazines by  
17 law-abiding citizens does not increase public safety.

18           49. Limiting magazine capacity for law-abiding citizens to ten rounds  
19 decreases public safety by giving violent criminals an advantage and thus  
20 decreasing the likelihood that a victim will survive a criminal attack.

21           50. The overwhelming majority of law enforcement officers in the United  
22 States acknowledge that banning standard-capacity magazines capable of holding  
23 more than ten rounds will not increase public safety.

24  
25                                   **DECLARATORY JUDGMENT ALLEGATIONS**

26           51. Plaintiffs are responsible, law-abiding adults qualified to own firearms  
27 under the laws of the United States and the laws of the State of California.  
28 Plaintiffs seek to lawfully possess constitutionally-protected magazines prohibited

1 by Section 619 for self-defense and other lawful purposes.

2 52. Plaintiffs presently intend to exercise their rights to defend themselves,  
3 their homes and families by keeping magazines prohibited by Section 619 for self-  
4 defense and other lawful purposes. The City's policies under Section 619 prevent  
5 them from doing so and criminalize the exercise of Plaintiffs' Second Amendment  
6 rights.

7 53. Because the City has enacted and enforces Section 619, Plaintiffs face  
8 potential criminal prosecution for exercising their Constitutional right to keep  
9 common magazines capable of holding more than ten rounds for self-defense and  
10 other lawful purposes.

11 54. There is an actual and present controversy between the parties hereto in  
12 that Plaintiffs contend that the City's ordinance that forbids residents from  
13 possessing common magazines violates the Second Amendment. The City denies  
14 these contentions. Plaintiffs desire a judicial declaration of their rights and the  
15 City's duties, namely, that the City's policy under Section 619 violates Plaintiffs'  
16 Second Amendment rights. Plaintiffs should not have to face criminal prosecution  
17 by the City for exercising their constitutional rights to keep and bear  
18 constitutionally-protected arms or, alternatively, give up those rights in order to  
19 comply with Section 619.

20  
21 **INJUNCTIVE RELIEF ALLEGATIONS**

22 55. If an injunction does not issue enjoining the City from enforcing Section  
23 619, Plaintiffs will be irreparably harmed. Plaintiffs are continuously and  
24 irreparably injured by Section 619 insofar as it precludes them from exercising  
25 rights guaranteed under the Second Amendment. Section 619 denies Plaintiffs the  
26 right to possess and use commonly-possessed magazines within the City and  
27 County of San Francisco for lawful purposes, including in-home self-defense,  
28 without risking criminal prosecution.

1 56. Because the City has enacted and enforces Section 619, Plaintiffs are  
2 subjected to irreparable harm. If not enjoined by this Court, the City will continue  
3 to enforce Section 619 in derogation of Plaintiffs' Second Amendment rights.

4 57. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages  
5 are indeterminate or unascertainable and would not fully redress any harm suffered  
6 by Plaintiffs as a result of being unable to engage in activity protected under the  
7 Second Amendment, namely the continued possession of their magazines that are  
8 prohibited by Section 619.

9 58. The injunctive relief sought would eliminate that irreparable harm and  
10 allow Plaintiffs to exercise their Second Amendment rights by continuing to  
11 possess magazines protected under the Second Amendment. Accordingly,  
12 injunctive relief is appropriate.

13 **CLAIM FOR RELIEF: VALIDITY OF SFPC § 619**

14 **Violation of the Second Amendment Right to Keep and Bear Arms**

15 **(U.S. Const., Amend.'s II and XIV)**  
16

17 59. Paragraphs 1-58 are realleged and incorporated herein by reference.

18 60. San Francisco Police Code Section 619 violates the Second Amendment  
19 on its face and as applied to Plaintiffs.

20 61. The Second Amendment protects the right to possess common  
21 magazines capable of holding more than ten rounds.

22 62. Section 619's prohibition on the possession of common magazines  
23 capable of holding more than ten rounds by law-abiding citizens, including  
24 Plaintiffs, directly conflicts with the right to keep and bear arms, rendering Section  
25 619 unconstitutional.

26  
27 **PRAYER FOR RELIEF**

28 WHEREFORE Plaintiffs pray for relief as follows:

1           1) For a declaration that San Francisco Police Code Section 619 violates the  
2 Second Amendment.

3           2) For a declaration that common ammunition feeding devices and magazines  
4 capable of holding more than ten rounds prohibited by Section 619 are protected  
5 under the Second Amendment.

6           3) For a preliminary prohibitory injunction forbidding the City and its agents,  
7 employees, officers, and representatives, from enforcing, or attempting to enforce  
8 Section 619.

9           4) For a permanent prohibitory injunction forbidding the City and its agents,  
10 employees, officers, and representatives, from enforcing, or attempting to enforce  
11 Section 619.


12           5) For remedies available pursuant to 42 U.S.C. § 1983 and for an award of  
13 reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988,  
14 and/or other applicable federal law;

15           6) For such other and further relief as the Court may deem just and proper.

16 Date: November 19, 2013

**MICHEL & ASSOCIATES, PC**

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
\_\_\_\_\_  
C. D. Michel  
Attorney for Plaintiffs

# **EXHIBIT A**

[Police Code - Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**Ordinance amending the Police Code to ban the possession of large capacity magazines for firearm ammunition; require that dealers advise persons purchasing a firearm of local firearms laws; establish a rebuttable presumption that the owner who has not reported the theft or loss of a firearm as required by law remains in possession of the firearm; modify certain requirements for ammunition sales require local dealers to report all ammunition sales to the Chief of Police; and, prohibit the operator of a shooting range from allowing minors to enter the premises.**

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 ~~strikethrough Arial font~~.  
Asterisks (\* \* \* \*) indicate the omission of unchanged Code subsections or parts of tables. Do NOT delete this NOTE: area.

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

Section 1. The San Francisco Police Code is hereby amended by adding Section 619 618, to read as follows:

**SEC. 619 618. PROHIBITION AGAINST POSSESSION OF LARGE CAPACITY MAGAZINES**

**(a) Findings.**

(1) In 2007, 3,231 people died from firearm-related injuries in California, and 4,491 other people were treated for non-fatal gunshot wounds.

(2) The ability of an automatic or semiautomatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine." Inside the

1 magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the  
2 firearm's action.

3 (3) Magazines with a capacity of more than 10 rounds of ammunition are generally  
4 considered to be "large capacity" magazines, although the statutory definitions vary. In some cases,  
5 large capacity magazines can hold up to 100 rounds of ammunition. Other types of firearms, in  
6 contrast, are generally capable of holding far less ammunition; for example, revolvers typically hold  
7 six rounds of ammunition in a rotating cylinder.

8 (4) Although detachable large capacity magazines are typically associated with  
9 machine guns or semiautomatic assault weapons, such devices are available for any semiautomatic  
10 firearm that accepts a detachable magazine, including semiautomatic handguns.

11 (5) The ability of large capacity magazines to hold numerous rounds of ammunition  
12 significantly increases the lethality of the automatic and semiautomatic firearms using them.

13 (6) Large capacity magazines were used in a number of recent high-profile shootings,  
14 including:

15 The shooting on the campus of Virginia Tech on April 16, 2007, where 32 people were  
16 killed and many others wounded,

17 The shooting in a gym in Pittsburgh on August 4, 2009, where three people were killed  
18 and nine others injured,

19 The shooting on November 5, 2009 at Fort Hood, Texas, where 13 people were killed  
20 and 34 more were wounded,

21 The shooting on January 8, 2011, at Tucson, Arizona, where 6 people were killed and 13  
22 people were injured, including a member of the United States House of Representatives, and

23 The shootings on December 14, 2012, at Newtown, Connecticut, where 27 people (not  
24 including the shooter) were killed.



1                   (7) Large capacity magazines have also been used against San Francisco police  
2 officers, including a recent incident at India Basin Shoreline Park, where undercover police officers  
3 were targeted with semiautomatic pistols containing 30-round magazines. Prohibiting large capacity  
4 magazines serves police safety by requiring perpetrators to pause to reload their firearms more  
5 frequently, giving police officers greater opportunity to apprehend them.

6                   (8) Large capacity magazine bans reduce the capacity, and thus the potential lethality,  
7 of any firearm that can accept a large capacity magazine.

8                   (9) Large capacity magazines are not necessary for individuals to vindicate their right  
9 to self-defense. Only in an extraordinarily rare circumstance would a person using a firearm in self-  
10 defense ever be required to use a large capacity magazine to defend himself or herself effectively. This  
11 is particularly true in an urban center like San Francisco, where law enforcement can and does  
12 respond quickly to threats and incidents. Conversely, the dangers of large capacity magazines are  
13 heightened in dense urban areas like San Francisco.

14                   (10) In 1994, in recognition of the dangers posed by these devices, Congress adopted a  
15 law prohibiting the transfer and possession of large capacity magazines as part of the federal assault  
16 weapon ban. That law was filled with loopholes, however.

17                   (11) The federal law was enacted with a sunset clause, providing for its expiration after  
18 ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to  
19 expire on September 13, 2004.

20                   (12) Research commissioned by the U.S. Department of Justice to analyze the effect of  
21 the 1994 federal ban on assault weapons and large capacity magazines found that attacks with  
22 semiautomatics including assault weapons and other semiautomatics equipped with large capacity  
23 magazines result in more shots fired, more persons hit, and more wounds inflicted per victim than do  
24 attacks with other firearms.

1                   (13) Since January 1, 2000, California Penal Code §§ 32310 et seq., have, with limited  
2 exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or  
3 exposing for sale, giving, or lending of large capacity magazines. California law does not, however,  
4 prohibit the possession of these magazines, and this gap in the law threatens public safety.

5                   (b) **Definition.** “Large capacity magazine” means any detachable ammunition feeding device  
6 with the capacity to accept more than 10 rounds, but shall not be construed to include any of the  
7 following:

8                   (1) A feeding device that has been permanently altered so that it cannot accommodate  
9 more than 10 rounds;

10                   (2) A .22 caliber tube ammunition feeding device; or

11                   (3) A tubular magazine that is contained in a lever-action firearm.

12                   (c) **Prohibition on Possession of Large Capacity Magazines.**

13                   (1) No person, corporation, or other entity in the City may possess a large capacity  
14 magazine, whether assembled or disassembled.

15                   (2) Any person who, prior to the effective date of this chapter, was legally in possession  
16 of a large capacity magazine shall have 90 days from such effective date to do any of the following  
17 without being subject to prosecution:

18                   (A) Remove the large capacity magazine from the City;

19                   (B) Surrender the large capacity magazine to the Police Department for  
20 destruction; or

21                   (C) Sell or transfer the large capacity magazine lawfully in accordance with  
22 Penal Code § 12020.

23                   (d) **Exceptions.** Subsection (c) shall not apply to the following:

1                   (1) Any government officer, agent, or employee, member of the armed forces of the  
2 United States, or peace officer, to the extent that such person is otherwise authorized to possess a large  
3 capacity magazine in connection with his or her official duties;

4                   (2) A person licensed pursuant to Penal Code §§ 26700 to 26915, inclusive;

5                   (3) A gunsmith for the purposes of maintenance, repair or modification of the large  
6 capacity magazine;

7                   (4) Any entity that operates an armored vehicle business pursuant to the laws of the  
8 state, and an authorized employee of such entity, while in the course and scope of his or her  
9 employment for purposes that pertain to the entity's armored vehicle business;

10                   (5) Any person, corporation or other entity that manufactures the large capacity  
11 magazine for a person mentioned in subsection (a) or for export pursuant to applicable federal  
12 regulations;

13                   (6) Any person using the large capacity magazine solely as a prop for a motion picture,  
14 television, or video production, or entertainment event;

15                   (7) Any holder of a special weapons permit issued pursuant to Penal Code § 33300,  
16 32650, 32700, 31000, or 18900;

17                   (8) Any person issued a permit pursuant to Penal Code § 32315 by the California  
18 Department of Justice upon a showing of good cause for the possession, transportation, or sale of large  
19 capacity magazines between a person licensed pursuant to Penal Code §§ 26700 to 26915 and an out-  
20 of-state client, when those activities are in accordance with the terms and conditions of that permit;

21                   (9) Any federal, state or local historical society, museum, or institutional collection  
22 which is open to the public, provided that the large capacity magazine is properly housed, secured from  
23 unauthorized handling, and unloaded;

24                   (10) Any person who finds the large capacity magazine, if the person is not prohibited  
25 from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the

1 large capacity magazine no longer than is necessary to deliver or transport the same to a law  
2 enforcement agency for that agency's disposition according to law:

3 (11) A forensic laboratory or any authorized agent or employee thereof in the course  
4 and scope of his or her authorized activities:

5 (12) Any person in the business of selling or transferring large capacity magazines in  
6 accordance with Penal Code § 12020, who is in possession of a large capacity magazine solely for the  
7 purpose of doing so; or

8 (13) Any person lawfully in possession of a firearm that the person obtained prior to  
9 January 1, 2000 if no magazine that holds 10 or less rounds of ammunition is compatible with that  
10 firearm and the person possesses the large capacity magazine solely for use with that firearm.

11 (e) **Penalty.** Any person violating this chapter is guilty of a misdemeanor.

12 (f) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section be for any  
13 reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such  
14 decision shall not affect the validity or the effectiveness of the remaining portions of this Section or any  
15 part thereof. The Board of Supervisors hereby declares that it would have adopted this Section  
16 notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its  
17 subsections, sentences, clauses, phrases, or words.

18 (g) **No duplication of state law.** In the event that the State of California enacts legislation  
19 prohibiting possession of large capacity magazines, this Section 618 shall have no force or effect to the  
20 extent that it duplicates any such state law.

21  
22 Section 2. The San Francisco Police Code is hereby amended by amending  
23 Section 613.10, to read as follows:

24 **SEC. 613.10. LICENSE—CONDITIONS.**

25 \* \* \* \*

1           (n) At or prior to the time of delivering a firearm, licensees shall provide the person buying,  
2 leasing, or receiving the loan of the firearm with a copy of a notice, to be prepared by the Chief of  
3 Police, advising the reader of local firearms laws, including safe gun storage requirements and the  
4 requirement to report a lost or stolen firearm. The notice may also include summary information on  
5 relevant State firearms laws, including the requirement that the sale, loan or other transfer of a firearm  
6 to a non-licensed person be completed through a licensed firearms dealer.

7  
8           Section 3. The San Francisco Police Code is hereby amended by amending  
9 Section 616, to read as follows:

10 **SEC. 616. REPORTING THE LOSS OR THEFT OF FIREARMS.**

11           (a) Any person that owns or is otherwise in possession of a firearm shall report the  
12 theft or loss of such firearm to the San Francisco Police Department within 48 hours of  
13 becoming aware of the theft or loss whenever

- 14                   (1) the owner resides in San Francisco, or  
15                   (2) the theft or loss of the firearm occurs in San Francisco.

16           (b) The failure of an owner or person in possession of a firearm to report the theft or  
17 loss of the firearms within 48 hours of when the owner or person in possession becomes  
18 aware or should have become aware of the theft or loss shall be punishable in accordance  
19 with Section 613.19.

20           (c) The failure of an owner or person in possession of a firearm to report the theft or loss of the  
21 firearms in a timely manner shall create a rebuttable presumption that the owner or person remains in  
22 possession of the firearm.

23  
24 / / /

25 / / /

1 Section 4. The San Francisco Police Code is hereby amended by amending  
2 Section 615, to read as follows:

3 **SEC. 615. RECORDS OF AMMUNITION SALES.**

4 (a) **Definitions.**

5 (1) "Firearm ammunition," as used in this Section, shall include any ammunition  
6 for use in any pistol or revolver, or semiautomatic rifle or assault weapon, but shall not include  
7 ammunition for shotguns that contains shot that is No. 4 or smaller.

8 (2) "Semiautomatic rifle," as used in this Section, shall mean any repeating rifle  
9 which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and  
10 chamber the next round, and which requires a separate pull of the trigger to fire each  
11 cartridge.

12 (3) "Assault weapon," as used in this Section, shall mean any of the weapons  
13 designated in California Penal Code Section 12276 or 12276.1.

14 (4) "Vendor," as used in this Section, shall mean any person located in the City  
15 and County of San Francisco who is engaged in the sale of firearm ammunition, including any  
16 retail firearms dealer.

17 (5) "Remote Vendor," as used in this Section, shall mean any person engaged  
18 in the sale of firearm ammunition, including any retail firearms dealer, who is located outside  
19 the City and County of San Francisco but delivers or causes to be delivered firearm  
20 ammunition to an address within the City and County of San Francisco.

21 (b) No Vendor shall sell or otherwise transfer ownership of any firearm ammunition  
22 without at the time of purchase recording the following information on a form to be prescribed  
23 by the Chief of Police:

24 (1) the name of the Vendor (including the name of the specific individual)  
25 transferring ownership to the transferee;

- 1 (2) the place where the transfer occurred;
- 2 (3) the date and time of the transfer;
- 3 (4) the name, address and date of birth of the transferee;
- 4 (5) the transferee's driver's license number, or other identification number, and
- 5 the state in which it was issued;
- 6 (6) the brand, type and amount of ammunition transferred; and
- 7 (7) the transferee's signature *and thumbprint*.

8 ~~Within 24 hours of the commencement of the transaction, regardless of when the~~  
9 ~~firearm ammunition is delivered, the Vendor shall report the transaction to the Chief of Police~~  
10 ~~by electronic mail at \_\_\_\_\_ or by such other means specified by the Chief of Police.~~  
11 ~~The report shall contain the same information required above.~~

12 (c) ~~(1) The records required by this Section shall be maintained on the premises of the~~  
13 ~~vendor for a period of not less than two years from the date of the recorded transfer. Said records shall~~  
14 ~~be subject to inspection at any time during normal business hours.~~

15 ~~(2) Any vendor or remote vendor~~ Any Vendor or Remote Vendor who sells or  
16 otherwise transfers ownership of five hundred (500) or more rounds of any firearm  
17 ammunition to a transferee in a single transaction, where the transaction occurs within the  
18 City and County of San Francisco or the firearm ammunition is ordered for delivery to an  
19 address within the City and County of San Francisco, shall be subject to the reporting  
20 requirement of this subsection ~~(c) (e)(2)~~. Within 24 hours of the commencement of the  
21 transaction, regardless of when the firearm ammunition is delivered, the Vendor or ~~Vendor or~~  
22 ~~Remote Vendor~~ shall report the transaction to the Chief of Police by electronic mail at  
23 \_\_\_\_\_ or by such other means specified by the Chief of Police. The report shall  
24 contain the same information required under subsection (b). In determining the number of  
25 rounds sold or otherwise transferred for purposes of complying with this subsection ~~(c) (e)(2)~~,

1 the Vendor or Remote Vendor ~~vendor or remote vendor~~ shall include any combination of types,  
2 brands or calibers sold or transferred to the transferee.

3 (d) No Vendor shall knowingly make a false entry in, or fail to make a required entry in,  
4 ~~or fail to maintain in the required manner~~ records prepared in accordance with subsection (b)  
5 ~~subsections (b) and (c)(1)~~. ~~No vendor shall refuse to permit a Police Department employee to examine~~  
6 ~~any record prepared in accordance with this Section during any inspection conducted pursuant to this~~  
7 ~~Section.~~ No Vendor or Remote Vendor shall fail to submit the report required under  
8 subsection (c) ~~subsections (b) or (c) in a timely manner~~ ~~subsection (c)(2)~~, or knowingly include  
9 false information in such report. A Vendor must maintain the records required under subsection (b)  
10 on the premises for a period of not less than two years from the date of the recorded transfer. Said  
11 records shall be subject to inspection by the Police Department at any time during normal business  
12 hours.

13 (e) **Penalties.**

14 (1) **First Conviction.** Any person violating any provision of this Section shall  
15 be guilty of an infraction. Upon conviction of the infraction, the violator shall be punished by a  
16 fine of not less than \$50 nor more than \$100.

17 (2) **Subsequent Convictions.** In any accusatory pleading charging a violation  
18 of this Section, if the defendant has been previously convicted of a violation of this Section,  
19 each such previous violation and conviction shall be charged in the accusatory pleading. Any  
20 person violating any provision of this Section a second time within a 90-day period shall be  
21 guilty of a misdemeanor and shall be punished by a fine of not less than \$300 and not more  
22 than \$400 for each provision violated, or by imprisonment in the County Jail for a period of not  
23 more than six months, or by both such fine and imprisonment. Any person violating any  
24 provision of this Section, a third time, and each subsequent time, within a 30-day period shall  
25 be guilty of a misdemeanor and shall be punished by a fine of not less than \$400 and not



1 more than \$500 for each provision violated, or by imprisonment in the County Jail for a period  
2 of not more than six months, or by both such fine and imprisonment.

3 (f) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section  
4 be for any reason declared unconstitutional or invalid or ineffective by any court of competent  
5 jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining  
6 portions of this Section or any part thereof. The Board of Supervisors hereby declares that it  
7 would have adopted this Section notwithstanding the unconstitutionality, invalidity, or  
8 ineffectiveness of any one or more of its subsections, sentences, clauses, phrases, or words.

9  
10 Section 5. The San Francisco Police Code is hereby amended by amending  
11 Section 1040, to read as follows:

12 **SEC. 1040. FIREARMS REGULATED; MINORS PROHIBITED.**

13 (a) It shall be unlawful for any person, firm, corporation, club or association,  
14 maintaining or conducting any shooting gallery or range to use or permit to be used or  
15 discharged therein any firearms of greater than 22 caliber, unless the cartridges used in such  
16 firearms be loaded with reduced charges.

17 (b) It shall be unlawful for any person, firm, corporation, club or association, maintaining or  
18 conducting any shooting gallery or range to permit any person under the age of 18 to enter the  
19 premises that are the subject of the permit unless accompanied by a parent or guardian.

20  
21 Section 6. Effective Date. This ordinance shall become effective 30 days after  
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
24 of Supervisors overrides the Mayor's veto of the ordinance.

1           Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7  
8  
9  
10 APPROVED AS TO FORM:  
11 DENNIS J. HERRERA, City Attorney

12  
13 By:

  
THOMAS J. OWEN  
Deputy City Attorney

14  
15  
16 n:\legana\as2013\1300396\00878805.doc  
17  
18  
19  
20  
21  
22  
23  
24  
25



**City and County of San Francisco**  
**Tails**  
**Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 130585

**Date Passed:** October 29, 2013

Ordinance amending the Police Code to ban the possession of large capacity magazines for firearm ammunition; require that dealers advise persons purchasing a firearm of local firearms laws; establish a rebuttable presumption that the owner who has not reported the theft or loss of a firearm as required by law remains in possession of the firearm; modify certain requirements for ammunition sales; and prohibit the operator of a shooting range from allowing minors to enter the premises.

October 10, 2013 Neighborhood Services and Safety Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

October 10, 2013 Neighborhood Services and Safety Committee - RECOMMENDED AS AMENDED

October 22, 2013 Board of Supervisors - PASSED ON FIRST READING

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Mar, Tang and Yee  
Excused: 2 - Kim and Wiener

October 29, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 130585

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 10/29/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

  
\_\_\_\_\_  
Mayor  
\_\_\_\_\_  
Date Approved