

December 1, 2020

SB 343

Senate Bill 343 mandates supplemental materials that have been received by the City Clerk's office that relate to an agenda item after the agenda packets have been distributed to the City Council be available to the public.

The attached documents were received in the City Clerk's office after distribution of the December 1, 2020, Regular City Council meeting agenda packet.

Item 7.1

December 1, 2020

City Council
City of Dublin
100 Civic Plaza
Dublin, CA 94568

Dear Members of the Dublin City Council,

On behalf of Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”), I write in support of the proposed ordinance that will require gun owners to safely store unattended firearms in residences. Founded by lawyers after the mass shooting at 101 California in 1993, in 2016, we joined forces with former Congresswoman and gun violence survivor, Gabby Giffords. For 27 years, the organization now known as Giffords Law Center has been providing legal expertise in support of local, state, and federal gun violence prevention laws to legislators nationwide.

Safe storage ordinances are constitutional and currently in effect in 22 California communities—Belvedere, Berkeley, Los Angeles, Millbrae, Moraga, Morgan Hill, Oakland, Orinda, Palm Springs, Redwood City, San Carlos, San Diego, San Francisco City and County, San Jose, San Marino, San Mateo County, Santa Clara County, Santa Cruz, Saratoga, Solana Beach, Sunnyvale, and Tiburon.

Safe storage laws are consistent with the Second Amendment and have been upheld by all reviewing courts.

In the landmark case, *District of Columbia v. Heller*,ⁱ the United States Supreme Court held that the Second Amendment protects a law-abiding, responsible citizen’s right to possess an operable handgun in the home for self-defense. The Court struck down a District of Columbia ordinance that “totally ban[ne]d handgun possession in the home” and required “that any lawful firearm in the home be disassembled or bound by a trigger lock *at all times*.”ⁱⁱ The Court found the ordinance unconstitutional precisely because it made it “impossible for citizens to use [firearms] for the core lawful purpose of self-defense.”ⁱⁱⁱ But the Court was careful to restrict its ruling to the unduly broad prohibition at issue, specifically stating that its holding was not intended to “suggest the invalidity of laws regulating the storage of firearms to prevent accidents.”^{iv}

In 2014, the NRA and other plaintiffs sued the City and County of San Francisco claiming its safe storage law—which required handguns kept in a residence to be stored in a locked container or disabled with a trigger lock when not carried on the person^v—violated the Second Amendment.^{vi} The Ninth Circuit Court of Appeal, in affirming the District Court’s ruling, found that the law did not significantly burden the right to possess a handgun in the home for self-defense, because guns stored safely can be accessed in a matter of seconds.^{vii} The court held that San Francisco demonstrated that the ordinance served a significant government interest by “reducing the number of gun-related injuries and deaths from having an unlocked handgun in the home,” and that the law was substantially related to that interest.^{viii} The court noted that

San Francisco’s law was unlike the law at issue in *Heller* because it left open other channels for self-defense in the home by allowing residents to carry firearms.^{ix} The United States Supreme Court declined to review the Ninth Circuit’s decision.^x

Similarly, both the Massachusetts State Supreme Court^{xi} and a New York State trial court^{xii} have reviewed Massachusetts’ and New York City’s safe storage laws, respectively, and found that neither violated the Second Amendment because the laws did not require a firearm to be rendered inoperable in the home at all times.

Since 2007 when the gun lobby challenged San Francisco’s ordinance, 21 other California communities have enacted safe storage laws. The gun lobby has threatened to sue all, or nearly all, of them but has actually sued none of them.

The proposed ordinance addresses the very real risks posed by unsecured guns in the home.

A recent study by researchers at the Center for Disease Control and Prevention stated that youth suicide with guns has risen dramatically between 2007 and 2014.^{xiii} In fact, gun suicides by minors 10 years old and older increased 60 percent in that period. Studies have demonstrated that the risk of suicide—particularly amongst children and teens—is significantly higher in homes where a firearm is kept loaded and/or unlocked.^{xiv} Additionally, a study of mass shootings demonstrated that in over half of shootings perpetrated by minors in elementary or secondary schools, the shooter used guns obtained from home that were likely unsecured.^{xv} Children and teens are also at risk of death or injury from unintentional shootings. Children as young as three-years-old are strong enough to fire some types of handguns.^{xvi} A 2005 study found that the practices of keeping firearms locked and unloaded, as well as storing ammunition in a locked location separate from firearms, serve as a protective measure to reduce youth suicide and unintentional injury in homes with children and teenagers where guns are stored.^{xvii}

More can and should be done to keep guns out of the hands of minors. California’s Child Access Prevention (CAP) law does not go far enough to protect children. In California, individuals may be criminally liable if they negligently store or leave, on premises within their custody or control, a firearm in a location where the person knows, or reasonably should know, that the child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian.^{xviii} No liability is imposed in this situation if reasonable action is taken to secure the firearm against access by a child. The law also does not apply if the firearm was kept in a locked container or in a location that a reasonable person would believe to be secure, or the firearm was locked with a locking device that rendered the firearm inoperable.^{xix}

Despite California’s CAP law which was enacted in 2011, the firearm suicide rate of minors under the age of 18 has remained steady between 2005 and 2017.^{xx} In 2012, a year after the state’s CAP law went into effect, the three-year-old child of a San Jose police officer found his father’s unlocked gun and fatally shot himself.^{xxi} A close reading of California state law demonstrates that it does not affirmatively require a gun

owner to store his or her firearm in any particular manner. So long as a person does not “negligently” store or leave a loaded firearm on his or her premises, or takes “reasonable” action to “secure” the firearm, he or she may not be liable even if a minor gets ahold of the firearm. Furthermore, if the person stores the firearm in a locked container or with a locking device, he or she escapes liability in the event a child does gain access to the firearm. These subjective standards only provide an out for individuals when a child actually gains access to a firearm. The law does not dictate what responsible storage is, and require that gun owners abide by it. A safe storage law would require that gun owners keep their guns in locked containers or secured with trigger locks; this is an unambiguous, preventative measure with an objective standard.

Safe storage laws prevent gun thefts that allow guns to be used in subsequent crimes.

The proposed ordinance will also likely prevent gun thefts by thieves, as well as people who have consent to be in the home, such as caregivers of elderly residents and other visitors. A study by Harvard and Northeastern researchers shows that hundreds of thousands of guns are stolen each year; gun theft is an important way that guns enter the illegal market.^{xxii} ATF estimates that about 10-15% of stolen guns are used in subsequent crimes.^{xxiii} According to the researchers, gun owners who safely store their firearms experience gun thefts at a lower rate than those who do not. The study also concludes that promoting safer storage of guns may help to reduce gun thefts and reduce the number of guns entering the illegal market.^{xxiv}

For the foregoing reasons, I strongly urge you to enact the safe storage ordinance.

Sincerely,



Allison Anderman
Senior Counsel

ABOUT **GIFFORDS LAW CENTER**

For over 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.

NOTES

ⁱ 554 U.S. 570 (2008).

ⁱⁱ *Id.* at 628.

ⁱⁱⁱ *Id.* at 630 (emphasis added).

^{iv} *Id.* at 632.

^v San Francisco Police Code § 4512. In 2016, San Francisco strengthened its safe storage ordinance to apply to all firearms, not only handguns.

^{vi} *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 962-968.

^{vii} *Id.* at 966.

^{viii} *Id.*

^{ix} *Id.* at 965.

^x *Jackson v. City & Cty. of S.F.*, 135 S. Ct. 2799 (2015).

^{xi} *Commonwealth v. McGowan*, 464 Mass. 232 (2013).

^{xii} *Tessler v. City of New York*, 952 N.Y.S.2d 703, 716 (2012).

^{xiii} Elizabeth Van Brocklin, “19 Children Are Shot in America Every Day,” *The Trace*, June 19, 2017.

^{xiv} Matthew Miller & David Hemenway, “The Relationship Between Firearms and Suicide: A Review of the Literature,” 4 *Aggression & Violent Behavior* (1999): 59, 62–65 (summarizing the findings of multiple studies).

^{xv} See Analysis of School Shootings, December 31, 2015, <http://everytownresearch.org/reports/analysis-of-school-shootings/>.

^{xvi} Sarah Kaplan, “3-year-old picks up great-grandpa’s pistol from nightstand, fatally shoots sister,” *Washington Post*, February 8, 2016, <https://www.washingtonpost.com/news/morning-mix/wp/2016/02/08/3-year-old-picks-up-great-grandpas-pistol-from-nightstand-fatally-shoots-sister/>.

^{xvii} David C. Grossman et al., “Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries,” 293 *JAMA* (2005): 707, 711-13, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.514.2207&rep=rep1&type=pdf>.

^{xviii} Cal. Penal Code § 25100(c).

^{xix} Cal. Penal Code § 25105(b), (d).

^{xx} Center for Disease Control and Prevention Web-based Injury Statistics Query and Reporting System (WISQARS), 2005 - 2017, California Suicide Firearm Deaths and Rates per 100,000, viewed on 2/11/19. In 2009, the rate of gun suicides by minors under age 18 was .29. In 2006, the rate was .25. California passed a “Child Access Prevention” law, and several amendments strengthening that law, between 2011 – 2013. The rate of gun suicides by minors was still .29 in

2013. The rate was .40 in 2017, showing that the rate has essentially remained steady (if not grown) for the 12 year period between 2005 and 2017 (the last year for which data is available).

^{xxi} Patrick May, “Gilroy neighbors mourn little boy’s accidental shooting death,” July 7, 2012, Mercury News, <http://www.mercurynews.com/2012/07/07/gilroyneighbors-mourn-little-boys-accidental-shooting-death/>.

^{xxii} David Hemenway, Deborah Azrael, and Matthew Miller, “Whose guns are stolen? The epidemiology of Gun theft victims,” *Injury Epidemiology*, January 13, 2017, <https://injepijournal.springeropen.com/articles/10.1186/s40621-017-0109-8>.

^{xxiii} Dan Noyes, “How Criminals Get Guns,” *Frontline*, <http://www.pbs.org/wgbh/pages/frontline/shows/guns/procon/guns.html>.

^{xxiv} David Hemenway, Deborah Azrael, and Matthew Miller, “Whose guns are stolen? The epidemiology of Gun theft victims,” *Injury Epidemiology*, January 13, 2017, <https://injepijournal.springeropen.com/articles/10.1186/s40621-017-0109-8>.