

FFL GUARD[®]

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March 7, 2013

Angela Cavillo, Clerk of the Board
Board of Supervisors
CITY AND COUNTY OF SAN FRANCISCO
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102
VIA Fax (415) 554-5163 & E-Mail

Re: BOS File Nos. 130039 [Police Code - Reporting Ammunition Sales of 500 or More Rounds]; 130040 [Police Code - Possession or Sale of Law Enforcement or Military Ammunition] – OPPOSITION

Dear Ms. Cavillo:

I write on behalf of *FFLGuard*, a cooperative legal program dedicated to representing the interests of its hundreds of federal firearms licensee (“FFL”) clients nationwide and throughout California, to **oppose** the City and County of San Francisco’s current proposals to require the reporting of ammunition sales of 500 or more rounds and banning the sale and possession of certain ammunition.

I. The Sales Reporting Requirement Is Overly Burdensome to Ammunition Retailers, and it Will Have No Law Enforcement Value

The proposed ordinance requiring the reporting of all ammunition sales over 500 rounds will prove extremely burdensome to ammunition retailers doing business in the City and County of San Francisco. And, based on the experiences of other jurisdictions, is highly unlikely to serve any legitimate law enforcement purpose.

Single purchases of 500 rounds are generally no cause for alarm. Indeed, such transactions are *very common* among law-abiding sportsmen and target shooters. Approximately 70% of all ammunition purchased in the United States – billions of rounds – is purchased for lawful target and sport shooting. Such consumers can easily expend 500 rounds or more in a single day at the range. And many gun enthusiasts regularly purchase ammunition in bulk to save money, keeping a supply of ammunition on their shelves for years. There is no telling how many thousands of purchases would have to be reported to local law enforcement annually.

Under this proposal, businesses inside and outside of San Francisco would be required, under threat of criminal prosecution, to register each one of these all too common (and otherwise lawful) transactions within 24 hours. And *FFLGuard* is hard pressed to find any real benefit that could outweigh the bureaucratic nightmare the City seeks to impose on retailers and local law enforcement by this proposal.

In fact, evidence has long shown that ammunition sales registration is an ineffective law enforcement tool. The failure of these programs is well documented.

In 1986, Congress repealed a ban on mail order ammunition sales that also required the keeping of detailed records by licensed dealers. During congressional hearings on the issue, the director of the Bureau of Alcohol, Tobacco and Firearms (ATF) stated: “The Bureau and Department have recognized that current recordkeeping requirements for ammunition have *no substantial law enforcement value*. In addition, their elimination would remove an unnecessary recordkeeping burden from licensees.”¹

¹ H.R. Rep. 99-495, at 17 (1986), U.S.C.C.A.N. 1327, 1343 (emphasis added).

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Consider also the experience of the City of Pasadena, which repealed a similar ammunition record-keeping requirement after finding it had no real law enforcement value. And because the City of Los Angeles has opted to retain its record-keeping requirement in spite of evidence that it has never generated a lead, the city now has created a mountain of paperwork that the LAPD has insufficient resources to manage.

As such, the onerous burden placed on ammunition retailers to register any sale of 500 or more rounds of ammunition places an unnecessary burden on retailers that promises to result in nothing more than a bureaucratic onslaught of paperwork without any corresponding value for more effective law enforcement.

II. The Ban on the Sale of Certain Ammunition Is Unconstitutionally Vague, Subjecting Ammunition Retailers to Unjust Prosecution Under the Law

The language of the proposed ordinance –specifically that which defines the prohibited ammunition – is hopelessly unclear. And it imposes *criminal penalties* for violation of the law. At minimum, adoption of this proposal is likely to lead to a legal challenge on constitutional vagueness grounds.

The due process provisions of the constitutions of the United States and California each require “a reasonable degree of certainty in legislation, especially in the criminal law. . . .”² To pass constitutional muster, a law must “define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited”³

Banning ammunition “that has physical properties resulting in ballistics performance identical to ammunition presently or formerly sold under the brand name Winchester Black Talon”⁴ requires ammunition retailers to make an impossible judgment about the ammunition the proposed ordinance seeks to ban, lest they face criminal charges. For how could an ammunition retailer contemplate if a certain type of ammunition, in fact, has physical properties that cause a

² *People v. Heitzman*, 9 Cal. 4th 189, 199 (1994).

³ *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

⁴ S.F., Cal., File No. 130040 [Police Code -Possession or Sale of Law Enforcement or Military Ammunition].

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certain bullet to perform in a manner “*identical* to ammunition presently or formerly sold under the brand name Winchester Black Talon.”⁵ What are the grounds for “performance” contemplated by this ordinance? What are the “physical properties” that a retailer is supposed to evaluate to make the judgment as to the quantitative nature of a bullet’s performance? What tests are to be conducted to evaluate “performance identical” to a Winchester Black Talon? Are all retailers supposed to conduct the same tests, or is there latitude in how each retailer evaluates identical performance? As such, the proposed ordinance and the burden it places on ammunition retailers is as absurd as it is constitutionally vague.

The proposal also charges the police department with the task of creating a “public database of brands and product lines of ammunition meeting the [ordinance’s] definition of ‘Prohibited Ammunition.’ ”⁶ But the failure of the police to create said database, or the omission of any specific ammunition “qualifying as ‘Prohibited Ammunition’ ” is not a defense to any violation of the ordinance.⁷ Without the aid of a reliable and comprehensive list, ammunition retailers are left to their own understanding of what ammunition is prohibited altogether and what type of ammunition is allowed to be stored in stock to sell to those qualifying under the proposed ordinance’s exceptions, which leaves them vulnerable to criminal prosecution for an unknowing violation of the law. The constitutional guarantees of due process of law do not tolerate this outcome.

III. CONCLUSION

The firearms industry and law-abiding gun owners in California are the most heavily regulated population in the country. Especially, in San Francisco, the burden increases with each new measure, making it nearly impossible for ammunition retailers to earn a livelihood or to create jobs and revenue for the city and state.

FFLGuard opposes these proposals because they will only increase the regulatory burden on law-abiding retailers and their customers and divert law enforcement resources, while serving no real public safety purpose.

⁵ *Id.* (emphasis added).

⁶ *Id.*

⁷ *Id.*

Sincerely,



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