

February 11, 2019

County of San Mateo, Board of Supervisors
400 County Center
Redwood City, CA 94063

Dear Members of the Board of Supervisors,

On behalf of Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”), I write in support of the proposed safe storage of firearms ordinance that will be introduced at the February 12, 2019 meeting of the San Mateo Board of Supervisors. 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 and her husband, Navy veteran and retired NASA astronaut, Mark Kelly. For over 25 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 14 California communities—Belvedere,¹ Berkeley,² Los Angeles,³ Moraga,⁴ Morgan Hill,⁵ Oakland,⁶ Orinda,⁷ Palm Springs,⁸ San Francisco,⁹ San José,¹⁰ Santa Cruz,¹¹ Sunnyvale,¹² Saratoga,¹³ and Tiburon.¹⁴

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*,¹⁵ 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[ned] 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.”¹⁶ 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.”¹⁷ 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.”¹⁸

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 person¹⁹—violated the Second Amendment.²⁰ **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.**²¹ 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.²² 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.²³ The United States Supreme Court declined to review the Ninth Circuit’s decision.²⁴

Similarly, both the Massachusetts State Supreme Court²⁵ and a New York State trial court²⁶ 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, thirteen 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. When the gun lobby has sued local California jurisdictions over their strong gun laws, however, Giffords Law Center has been able to procure pro bono litigation defense from top law firms for these jurisdictions. **Should the gun lobby take the unusual and ill-advised step of suing the County on the basis of this ordinance, Giffords Law Center makes the same offer of litigation support to the County that we have made to other jurisdictions.**

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 2014.²⁷ 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.²⁸ 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.²⁹ 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.³⁰ 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.³¹

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 loaded 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.³² 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.³³

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 2017.³⁴ **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.**³⁵ 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.

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.³⁶ ATF estimates that about 10-15% of stolen guns are used in subsequent crimes.³⁷ 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.³⁸

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

Sincerely,



Allison Anderman
Managing Attorney

ABOUT GIFFORDS LAW CENTER

For nearly 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

1. Belvedere Municipal Code § 9.71.020.
2. Berkeley Municipal Code § 13.69.010.
3. Los Angeles Municipal Code § 55.21.
4. Ordinance n.275 adopted March 14, 2018. Not yet codified.
5. Morgan Hill Municipal Code § 9.04.040.
6. Oakland Municipal Code § 9.39.040.
7. Orinda Municipal Code § 9.13.010.
8. Palm Springs Municipal Code § 11.16.045.
9. San Francisco Police Code § 4512.
10. San Jose Municipal Code § 10.32.170.
11. Santa Cruz Municipal Code § 9.29.020.
12. Sunnyvale Municipal Code § 9.44.040.
13. Saratoga Municipal Code § 6-35.010
14. Tiburon Municipal Code § 32-30.
15. 554 U.S. 570 (2008).
16. *Id.* at 628 (emphasis added).
17. *Id.* at 630 (emphasis added).
18. *Id.* at 632.

19. In 2016, San Francisco strengthened its safe storage ordinance to apply to all firearms, not only handguns.
20. *Jackson*, 746 F.3d at 953.
21. *Id.* at 966.
22. *Id.*
23. *Id.* at 965.
24. *Jackson v. City & Cty. of S.F.*, 135 S. Ct. 2799 (2015).
25. *Commonwealth v. McGowan*, 464 Mass. 232 (2013).
26. *Tessler v. City of New York*, 952 N.Y.S.2d 703, 716 (2012).
27. Elizabeth Van Brocklin, “19 Children Are Shot in America Every Day,” *The Trace*, June 19, 2017.
28. 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).
29. See *Analysis of School Shootings*, December 31, 2015, <http://everytownresearch.org/reports/analysis-of-school-shootings/>.
30. 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-upgreat-grandpas-pistol-from-nightstand-fatally-shoots-sister/>.
31. 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>.
32. Cal. Penal Code § 25100(c).
33. Cal. Penal Code § 25105(b), (d).
34. 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).
35. 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/>.
36. David Hemenway, Deborah Azrael, and Matthew Miller, “Whose guns are stolen? The epidemiology of Gun theft victims,” *Injury Epidemiology*, January 13, 2017, <https://injejournal.springeropen.com/articles/10.1186/s40621-017-0109-8>.
37. Dan Noyes, “How Criminals Get Guns,” *Frontline*, <http://www.pbs.org/wgbh/pages/frontline/shows/guns/procon/guns.html>.
38. David Hemenway, Deborah Azrael, and Matthew Miller, “Whose guns are stolen? The epidemiology of Gun theft victims,” *Injury Epidemiology*, January 13, 2017, <https://injejournal.springeropen.com/articles/10.1186/s40621-017-0109-8>.