

1 [Firearm Strict Liability Act]
 2 AMENDING ARTICLE 35 OF THE POLICE CODE BY REPEALING EXISTING SECTIONS
 3 3500 THROUGH 3512 AND ADDING NEW SECTIONS 3500 THROUGH 3503 TO IMPOSE
 4 STRICT LIABILITY ON GUN MANUFACTURERS, IMPORTERS AND DEALERS FOR
 5 INJURIES AND DEATHS CAUSED BY FIREARMS AND WHICH OCCUR WITHIN THE CITY
 6 AND COUNTY OF SAN FRANCISCO

7 Note: Additions are underlined; deletions are in ((double parentheses)).

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

9 Section 1. Article 35 of the San Francisco Police Code is hereby amended by
 10 repealing the title and sections 3500 through 3512 to read as follows:

11 **((ARTICLE 35: CONTROL OF THE POSSESSION OF HANDGUNS**

12 **SEC. 3500. FINDINGS.** (a) It has been determined that in order to promote and to protect
 13 the health and safety and welfare of the public, it is necessary to regulate the possession of
 14 handguns.

15 (b) The easy and convenient availability of handguns has been a principal factor in
 16 firearm-related deaths in the City and County of San Francisco.

17 (c) Handguns which are possessed by law abiding citizens are frequently stolen
 18 and used in criminal activities.

19 (d) Handguns play a major role in the commission of crimes of homicide, robbery,
 20 assault and in many instances of accidental death and injuries.

21 **SEC. 3501. CONTROL OF HANDGUNS.** This Article shall be known as "The
 22 Handgun Control Ordinance."

23 **SEC. 3502. DEFINITIONS.**

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1 (a) "Handgun," as used in this Article, means any "pistol," "revolver," and "firearm
2 capable of being concealed upon the person" which is designed to be used as weapon from
3 which is expelled a projectile by the force of any explosion or other form of combustion, and
4 which has a barrel less than 12 inches in length. "Pistol," "revolver," and "firearm capable of
5 being concealed upon the person" as used in this Article shall include the frame or receiver of
6 any such weapon.

7 The above definition shall not include any muzzle loading, smooth bore firearm which is
8 possessed as a collector's item.

9 (b) "Person," as used in this Article, means any individual, corporation, company,
10 association, firm, partnership, retail dealer, wholesale dealer, club, society or joint stock
11 company.

12 **SEC. 3503. POSSESSION OF HANDGUNS PROHIBITED.**

13 It shall be unlawful for any person to possess, within the City and County of San
14 Francisco, any handgun.

15 **SEC. 3504. PENALTY.**

16 Any person who shall violate any of the provisions of Section 3503 of this Article shall
17 be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment
18 in the County Jail for not less than 30 days nor more than six months.

19 **SEC. 3505. GRACE PERIOD FOR LAWFULLY POSSESSED HANDGUNS.**

20 Any person who is in lawful possession of a handgun, at the time of the effective date
21 of this ordinance, may continue to possess that handgun for a period of 90 days after the
22 effective date of this ordinance.

23 **SEC. 3506. CONFISCATION AND DESTRUCTION OF HANDGUNS.**

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1 Upon conviction of a violation of the provisions of this Article, any handgun which was
2 the subject of the violation shall be ordered confiscated and the Police Department shall be
3 directed to destroy the handgun.

4 **SEC. 3507. PERSONS EXCEPTED FROM THIS ARTICLE'S PROHIBITIONS.**

5 Section 3503 shall not apply to any of the following:

6 (A) Peace officers listed in Sections 830.1, 830.2, 830.3, 830.3.1, 830.4, 830.5, and
7 830.6 of the Penal Code whether active or honorably retired, other duly appointed peace
8 officers, full-time paid peace officers of other states and the federal government who are
9 carrying out official duties while in California, or any person summoned by any such officers to
10 assist in making arrests or preserving the peace while such person is actually engaged in
11 assisting such officer.

12 (B) Members of the military forces of this state or of the United States while
13 engaged in the performance of their duties.

14 (C) Persons who are using handguns while on the premises of licensed target
15 ranges for the purpose of practice shooting or who are members of licensed shooting clubs
16 while such persons are hunting on the premises of such clubs; provided such ranges and
17 clubs keep such handguns stored in safe places on the premises at all times when the
18 handguns are not being used.

19 (D) Persons transporting handguns from a licensed target range or licensed
20 shooting club to another licensed target range or licensed shooting club and persons
21 transporting handguns from a licensed retailer to a licensed target range or licensed shooting
22 club, provided, however, that the transportation is for the purpose of practice shooting or
23 hunting or for the purpose of permanently keeping the transported handgun on the premises
24 of the other range or club; and provided that at all times during such transportation, each
25 handgun shall have a trigger lock securely fastened upon it.

1 (E) Any person licensed as a collector of firearms by the Secretary of the Treasury
2 of the United States under Title 18, United States Code, Section 923 and who is in lawful
3 possession of firearms classified as curios or relics under 18 U.S.C. Chapter 44.

4 (F) Persons who are authorized to carry handguns pursuant to Article 3
5 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of the Penal Code, and
6 persons who are authorized to sell handguns pursuant to Penal Code Section 12070.

7 (G) Armored vehicle guards, as defined in Section 7521 of the Business and
8 Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if
9 they have received a Firearms Qualifications Card from the Department of Consumer Affairs,
10 in each case while acting within the course and scope of their employment.

11 (H) Any of the following persons who have completed a regular course in firearms
12 training approved by the Commission on Peace Officer Standards and Training:

13 (1) Patrol special police officers and assistant patrol special police officers who
14 have been appointed in accordance with the laws of the City and County of San Francisco;

15 (2) Animal control officers or zookeepers, regularly compensated as such by a
16 governmental agency when acting in the course and scope of their employment.

17 (3) Persons who are authorized to carry handguns pursuant to Section 607f of the
18 Civil Code, while actually engaged in the performance of their duties pursuant to such section;

19 (4) Harbor police designated pursuant to Section 653.5 of the Harbors and
20 Navigation Code.

21 (I) Any of the following persons who have been issued a Certificate pursuant to
22 Section 12033 of the Penal Code:

23 (1) Guards or messengers of common carriers, banks, and other financial
24 institutions while actually employed in and about the shipment, transportation, or delivery of
25 any money, treasure, bullion, bonds, or other thing of value within this state.

1 (2) Guards of contract carriers operating armored vehicles pursuant to California
2 Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977;
3 or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and
4 use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

5 (3) Private investigators, private patrol operators, and alarm company operators
6 who are licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the
7 Business and Professions Code, while acting within the course and scope of their
8 employment.

9 (4) Uniformed security guards or night guards employed by any public agency,
10 while acting within the scope and in the course of their employment.

11 (5) Uniformed security guards, regularly employed and compensated as such by
12 persons engaged in any lawful business, while actually engaged in protecting and preserving
13 the property of their employers and uniformed alarm agents employed by an alarm company
14 operator while on duty.

15 (6) Uniformed employees of private patrol operators and uniformed employees of
16 private investigators licensed pursuant to Chapter 11 (commencing with Section 7500) of
17 Division 3 of the Business and Professions Code, while acting within the course and scope of
18 their employment.

19 (J) Any person engaged in any lawful business, including a nonprofit organization,
20 or any officer, employee, or agent authorized by such person for lawful purposes connected
21 with such business, possessing a handgun within such person's fixed place of business.

22 **SEC. 3508. VOLUNTARY DELIVERY OF HANDGUNS TO THE POLICE**
23 **DEPARTMENT.**

24 No person shall be in violation of this Article who voluntarily delivers and abandons to
25 the Police Department of the City and County of San Francisco, any handgun, provided the

1 handgun is unloaded and wrapped in a package and the package is carried in open view
2 during transportation.

3 **SEC. 3509. PLACE OF DELIVERY.**

4 Delivery and abandonment of handguns under this Article may be made at any police
5 station or by summoning a police officer to the premises in which the handgun is kept.

6 **SEC. 3510. NO REQUIREMENT TO FURNISH INFORMATION ON VOLUNTARY
7 DELIVERY AND ABANDONMENT OF HANDGUNS.**

8 No person who delivers and abandons a handgun in accordance with Sections 3508
9 and 3509 of this Article shall be required to show identification, nor to be photographed, nor to
10 be fingerprinted, nor to furnish any information at the time of delivery of the handgun.

11 **SEC. 3511. DUTY OF POLICE DEPARTMENT TO CONDUCT WEAPONS
12 INVESTIGATION AND TO DESTROY HANDGUNS.**

13 Whenever any handgun is delivered and abandoned or is confiscated under this
14 Article, the Police Department shall investigate as to whether the handgun is needed as
15 evidence in any proceeding and if the handgun is not needed as evidence, the police shall
16 destroy the handgun.

17 **SEC. 3512. SAVING CLAUSE: INVALIDITY OF PART OF ARTICLE NOT TO
18 AFFECT REMAINDER.**

19 If any section, subsection, sentence, clause or phrase of this Article is for any reason
20 held to be unconstitutional, or invalid, such decision shall not affect the validity of the
21 remaining portions of this Article. The Board of Supervisors hereby declares that it would have
22 passed this Article and each section, subsection, sentence, clause and phrase thereof,
23 irrespective of the fact that any one or more sections, subsections, sentences, clauses or
24 phrases be declared unconstitutional.))

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1 Section 2. Article 35 of the San Francisco Police Code is hereby amended by adding
2 new sections 3500 through 3503 to read as follows:

3 **ARTICLE 35: FIREARM STRICT LIABILITY ACT**

4 **SEC. 3500. Findings** The Board of Supervisors finds as follows: (a) The
5 unauthorized use of firearms in the City and County of San Francisco is responsible for
6 approximately two hundred injuries and approximately sixty deaths each year.

7 (b) The cost of these needless deaths and injuries is generally borne by the injured
8 parties and their families or by the public through the provision of police, emergency and
9 medical services, even in those instances where the person using the firearm is convicted of a
10 crime. The average cost of hospitalization for each person injured as a result of a shooting in
11 San Francisco was approximately \$12,128 as of 1996. The total monetary costs to the
12 citizens of San Francisco each year due to these injuries and deaths as a result of hospital
13 expenditures alone exceeds approximately three million dollars.

14 (c) The manufacturers, importers and dealers of these firearms profit handsomely from
15 the sales of firearms, but bear virtually no responsibility for the costs incurred as a result of the
16 deaths and injuries caused by the use of their products in San Francisco.

17 (d) In order to promote and to protect the health, safety and welfare of the citizens of
18 San Francisco, it is necessary and appropriate to reallocate the cost of injuries and deaths
19 arising from the discharge of firearms by imposing strict liability upon the manufacturers,
20 importers and dealers of those firearms, who are most able financially to accept these costs
21 due to their ability to pass the costs on to consumers of firearms.

22 (e) Imposing strict liability upon manufacturers, importers and dealers of these firearms
23 for injuries and deaths caused by the firearms is appropriate because these firearms are
24 designed to inflict serious injuries and death.

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1 **SEC. 3501. DEFINITIONS.** (a) "Firearm" shall have the same meaning as in San

2 Francisco Police Code section 613.1(a).

3 (b) "Dealer" means any person engaged in the business of selling firearms at
4 wholesale or retail and specifically includes pawnbrokers who take or receive firearms as
5 security for the payment or repayment of money.

6 (c) "Importer" means any person engaged in the business of importing or bringing
7 firearms into the United States for sale or distribution.

8 (d) "Manufacturer" means any person in business to manufacture or assemble a
9 firearm or ammunition for sale or distribution.

10 (e) "Law enforcement agency" means a federal, state or local law enforcement
11 agency, state militia or an agency of the United States government.

12 (f) "Law enforcement official" means any officer or agent of an agency defined in
13 paragraph (e) of this section who is authorized to use a firearm in the course of his or her
14 work.

15 (g) "Internal personalized safety feature" means any internal locking device or other
16 mechanical or electrical device integral to the frame of the firearm that prevents any
17 unauthorized use of the firearm. Such mechanical or electrical devices can include but are
18 not limited to devices that use computer microchips, radio signals or user fingerprints as a
19 means to "recognize" an authorized user. A trigger lock or other external device shall not be
20 considered an internal personalized safety feature.

21 **SEC. 3502. IMPOSITION OF STRICT LIABILITY** (a) Each manufacturer, importer
22 and/or dealer of a firearm shall be held strictly liable in tort, without regard to fault or proof of
23 defect, for all direct and consequential damages arising from bodily injury or death where the
24 bodily injury or death results from the discharge within the jurisdiction of the City and County

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1 of San Francisco of any firearm manufactured, imported, distributed, sold, leased or otherwise
2 transferred by the manufacturer, importer and/or dealer, except that no liability shall be
3 imposed pursuant to this subsection for a discharge that occurs prior to the effective date of
4 this section.

5 **(b) Exemptions and Limitations.** (1) No action may be commenced pursuant to this
6 section by any person who is injured or killed by the discharge of a firearm while such person
7 is committing or attempting to commit a crime (whether or not such crime is actually charged),
8 or while such person is attempting to evade arrest by a law enforcement official. This
9 exemption shall be in the nature of an affirmative defense, and shall be proven by a
10 preponderance of the evidence.

11 (2) No action may be commenced pursuant to this section by any person injured or
12 killed by the discharge of a firearm by a law enforcement official.

13 (3) This section shall not limit in scope any cause of action, other than that provided by
14 this section, available to a person injured by or killed by a firearm.

15 (4) Nothing in this section shall prevent a manufacturer, importer or dealer from
16 seeking whole or partial indemnity or contribution for any liability incurred under this section
17 from any third party wholly or partially responsible for the injury or death.

18 (5) No action may be commenced pursuant to this section by any person for a self-
19 inflicted injury.

20 (6) No action may be commenced pursuant to this section where the firearm was
21 equipped with an internal personalized safety feature at that time of its first retail sale.

22 (7) If any manufacturer, importer or dealer has purchased and has in effect at the time
23 of the injury an insurance policy that covers any and all damages, including but not limited to
24 bodily injury or death, resulting from the discharge of the specific firearm involved in the
25 incident, the liability imposed under this section as to that manufacturer, importer or dealer

1 shall not exceed the total amount of coverage available under said policy provided that the
2 total coverage available under the policy shall not be less than \$100,000 per incident.

3 (8) No action may be commenced pursuant to this section where the firearm involved
4 is either (a) a shotgun without a magazine or having a fixed magazine of four or less rounds or
5 (b) a rifle without a magazine or having a fixed magazine of four or less rounds.

6 **SEC. 3503. SAVING CLAUSE: INVALIDITY OF PART OF ARTICLE NOT TO**
7 **AFFECT REMAINDER.**

8 If any section, subsection, sentence, clause or phrase of this Article is for any reason
9 held to be unconstitutional, or invalid, such decision shall not affect the validity of the
10 remaining portions of this Article. The Board of Supervisors hereby declares that it would
11 have passed this Article and each section, subsection, sentence, clause and phrase thereof,
12 irrespective of the fact that any one or more sections, subsections, sentences, clauses or
13 phrases be declared unconstitutional.

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15 APPROVED AS TO FORM:

16 LOUISE H. RENNE, City Attorney

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19 By:



D. CAMERON BAKER
Deputy City Attorney

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SUPERVISORS BECERRIL, LENO, YAKI
BOARD OF SUPERVISORS



City and County of San Francisco

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

Tails Ordinance

File Number: 001490

Date Passed:

Ordinance amending Article 35 of the Police Code by repealing existing Sections 3500 through 3512 and adding new Sections 3500 through 3503 to impose strict liability on gun manufacturers, importers and dealers for injuries and deaths caused by firearms and which occur within the City and County of San Francisco.

December 4, 2000 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

December 11, 2000 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

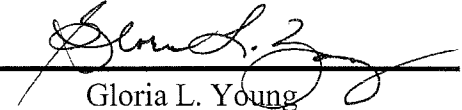
Absent: 1 - Becerril

File No. 001490

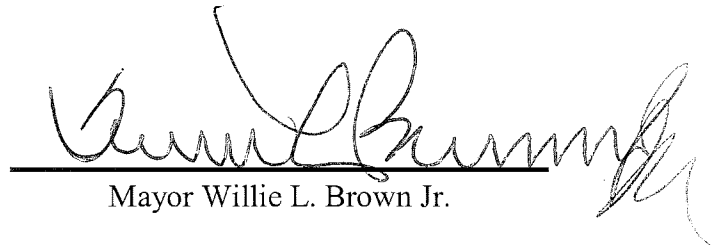
I hereby certify that the foregoing Ordinance was FINALLY PASSED on December 11, 2000 by the Board of Supervisors of the City and County of San Francisco.

DEC 22 2000

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.