

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

ESPANOLA JACKSON, PAUL COLVIN,	)	<b>CASE NO. C09-2143-RS</b>
THOMAS BOYER, LARRY BARSETTI,	)	
DAVID GOLDEN, NOEMI MARGARET	)	<b>PLAINTIFFS' REQUEST FOR JUDICIAL</b>
ROBINSON, NATIONAL RIFLE	)	<b>NOTICE IN SUPPORT OF MOTION FOR</b>
ASSOCIATION OF AMERICA, INC., SAN	)	<b>PARTIAL JUDGMENT ON THE</b>
FRANCISCO VETERAN POLICE	)	<b>PLEADINGS; DECLARATION OF</b>
OFFICERS ASSOCIATION,	)	<b>CLINTON B. MONFORT IN SUPPORT</b>
	)	
Plaintiffs	)	<b>PART 2 OF 2; EXHIBITS J - T</b>
	)	
vs.	)	Hearing: July 12, 2012
	)	Time: 1:30 p.m.
CITY AND COUNTY OF SAN	)	Place: Courtroom 3 - 17th Floor
FRANCISCO, THE MAYOR OF	)	450 Golden Gate Ave.
SAN FRANCISCO, AND THE CHIEF	)	San Francisco, CA 94102
OF THE SAN FRANCISCO POLICE	)	
DEPARTMENT, in their official capacities,	)	
and DOES 1-10,	)	
	)	
Defendants.	)	

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ESPANOLA JACKSON, PAUL COLVIN, ) **CASE NO.: CV-09-2143-RS**  
THOMAS BOYER, LARRY BARSETTI, )  
DAVID GOLDEN, NOEMI MARGARET )  
ROBINSON, NATIONAL RIFLE ) **CERTIFICATE OF SERVICE**  
ASSOCIATION OF AMERICA, INC., SAN )  
FRANCISCO VETERAN POLICE )  
OFFICERS ASSOCIATION, )

Plaintiffs )

vs. )

CITY AND COUNTY OF SAN )  
FRANCISCO, THE MAYOR OF )  
SAN FRANCISCO, AND THE CHIEF )  
OF THE SAN FRANCISCO POLICE )  
DEPARTMENT, in their official capacities, )  
and DOES 1-10, )

Defendants. )

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of

**PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS;  
DECLARATION OF CLINTON B. MONFORT IN SUPPORT**

**PART 2 OF 2; EXHIBITS J - T**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Wayne Snodgrass, Deputy City Attorney  
Christine Van Aken, Deputy City Attorney  
Office of the City Attorney  
1 Drive Carlton B. Goodlett Place  
City Hall, Room 234  
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 17, 2012.

/s/ C. D. Michel

C. D. Michel

Attorney for Plaintiffs

## **EXHIBIT “J”**



## City and County of San Francisco

TUESDAY, OCTOBER 04, 2011

i believe

>> and welcome to the san francisco board of supervisors meeting.

Can you please call the roll?

**Supervisor avalos:** present.

**Supervisor campos:** present.

**president chiu:** present.

**Supervisor chu:** here.

**Supervisor cohen:** present.

**Supervisor elsbernd:** here.

**Supervisor farrell:** present.

**Supervisor kim:** here.

**Supervisor mar:** here.

**Supervisor mirkarimi:** present.

**Supervisor wiener:** present.

>> all members are present.

**President Chiu:** can you please join me in the pledge of allegiance?

[Pledge of alleg iance]

[Inaudible conversations]

Madam Car, do we have any communications?

>> there are no communications.

Items one-seven comprise the consent agenda and will be acted

on by a single roll call vote

unless it is requested to be removed and considered separately.

**Supervisor mirkarimi:** four.

**President Chiu:** items one

through seven without item four.

**Supervisor cohen:** aye.

**Supervisor elsbernd:** aye.

**Supervisor farrell:** aye.

**Supervisor kim:** aye.

**Supervisor mar:** aye.

**supervisor mirkarimi:** aye.

**Supervisor wiener:** aye.

**Supervisor avalos:** aye.

**Supervisor campos:** aye.



for alarm fire in the district. I apologize that I wasn't here for the complete meeting through the chair.

I would ask the general council

to ask a couple questions.

>> good afternoon, special counsel.

**Supervisor Mirkarimi:** I understand the aim of what

supervisor supervisor Farrell

-- what supervisor Farrell and

Elsbernd are doing.

I am one of the early sponsors of public financing for the mayoral campaigns.

It is a time that we design that

legislation, we did so based on a certain level, a trigger level

of expenditure in matching donations. If we were to reassess what that

level would look like, the

1.475, theoretically adjust the

level higher up, what would you

suggest as part of that process?

is that an automatic disqualification?

Is that something that doesn't necessarily assist in the arguments that are trying to correct what doesn't need to be corrected?

>> it would not have that much effect.

the concern that I have is the connection between an outside

expenditures and the public finance.

If you change those amounts,

eliminating the connections, make whatever changes you wish to make.

**Supervisor Mirkarimi:** the connection being is not relative

to any specific number?

>> even if you raise that to a

higher number, the burden is on the city to prove that you have

a compelling interest.

**Supervisor Mirkarimi:** it has not yet been assessed by a specific trigger, are we correct?

>> it is not one that I have heard. I don't

think the ethics commission who serves that proposal.

**Supervisor Mirkarimi:** that helps

begin part of the larger question of potential remedies.

Many here have been trying to sort through the possibility

either in adapting to supreme

court ruling or protecting what

San Francisco has already passed.

It is a possible one, correct?

>> it is, in light of the

supreme court decision.

**President Chiu:** supervisor

avalos, will you defer

defer to supervisor farrell?

**Supervisor farrell:** raising a

cap has nothing to do, except politically speaking, but legally speaking, has nothing to do with wh

curing what ails us.

>> the city will still be at risk.

**Supervisor farrell:** May be something to mitigate an adjustment, just making sure

that we have nothing to do with

legally speaking, the supreme court's decision.

>> you could conjure up the argument that the chill won't

happen, but it is not a very strong argument.

**Supervisor farrell:** what I opposed to my colleagues, the

idea is to combine -- or are we waiting on this part of it?

The part of it before us exposing us to legal risk?

We can take up the other issue when the ethics commission hears it.

**Supervisor campos:** thank you,

Mr. President.

first, let me say that I don't

know that -- know that having this discussion in open session

in terms of the viability, I

will be voting against it.

I appreciate the reasoning behind it. I think it is important for us to address what the supreme

court has decided to.

It takes into consideration some of the policy reasons why we

have public financing.

>> I look forward to having that

discussion and conversation as the matter goes forward. I want to thank supervisor kim

and her staff for trying to

serve -- comply with the supreme

court ruling and taking into

account some of the decisions

that everything has to be taken

into consideration in a way that is responsible.

My colleagues indicated the need

for us to come forward the

proposal as an alternative, and

I appreciate the fact that

supervisor kim has done that.

**Supervisor mar:** thank you.

I wanted to thank mark from the city attorney's office for the

great advice he's given us.

I support the efforts of

supervisors elsbernd and farrell.

I wanted to couple that with increasing the spending caps for

the mayoral elections.

I will be supportive of supervisor kim, and others to hers to

couple the removing of the

trigger with increased spending caps. I think they voted overwhelmingly for campaign finance reform, and that will

have efforts to improve our

public financing system and make it legally indefensible.

-- legally defensible.

I appreciate the work of

supervisors farrell and elsbernd.

**Supervisor kim:** thank you so much. I want

to thank that supervisor elsbernd and farrell.

This was not something that we have been paying attention to.

To directly address the question

of why waiting to address a supreme court ruling in separate

legislation, our office thought it was strong that we have

levels of accountability for public financing. including supervisor mirkarimi

and many of the advocates that worked on framing that issue.

We spent some time doing outreach which is why it took us

time to come forward, examining multiple options.

It includes supervisor farrell

and elsbernd's amendments.

Exactly as the supreme court

ruling had indicated. We want to couple it with other amendments that will continue to address the original intent of

public financing without this

incentivizing candidates --

disincentivizing candidates.

We also wanted to become a public finance candidate as well.

This is something that the

ethics director -- thank you for your assistance on this as well.

It was a strong position, many of the advocates wanted a full hearing on this legislation.

This will now give the community

opportunity to give feedback for

both the ethics commission and the board of supervisors.

**Supervisor elsbernd:** thank you,

mr. President, and thank you,

supervisor kim, for coming

forward with this legislation.

The amendment that you are introducing is exactly what supervisor farrell and I have introduced.

i just want to point out a couple of things that perhaps have not been thought through.

First, a rule of the board, and a supervisor can divide a

question -- any supervisor can divide a question. If the intent of this is to ensure that there are eight votes, let'

s use me as an example.

You will not get me to vote for

the supervisorial races.

I will divide the question.

By not moving forward with the the item today, I will say that we' ll need a budget analyst report as well, because this is increasing the cost of government by increasing how much candidates will have.

You are opening up a six-week

period where there will

absolutely can be a lawsuit and attorney fees.

they are now on record saying that you agree with what supervisor farrell has done.

Presumably you vote for the way that you said you agree.

The other piece will fall, but it will all be about increasing

the campaign and that -- limit.

There are a lot of people sitting up here that are running for reelection next year.

The way that it is presented

will do a lot more harm for the

desire to improve the public financing system because it will

look so self-interested for incumbents to raise their limits and couple it with something that everyone else already

agreed we are not going to vote for today.

If the effort is truly designed

to improve the public finance and strengthen in for the city, what this is doing is really going to sour supervisor mar' s point.

This will look so self interested, particularly for those of you that are running for office next year.

**Supervisor wiener:** I' ll be

voting for the ordinance today.

I think that discussing whether

to increase supervisorial spending caps as a worthwhile discussion.

having just gone through a raise last year, there is a pretty

decent argument that the cap is too low.

It is a worthwhile discussion.

**Supervisor kim:** I want kim

want to thank supervisor kim:

for raising the discussion.

The two have nothing to do with each other.

If we have a part of ordinance

that all we can tell is patently unconstitutional, I don' t like that it is.

I think the supreme court was

wrong, but they've ruled we

should repeal it.

I will not open ourselves up to a lawsuit that we'll move.

We have a duty to do that, in my view.

I have not heard any argument about why we should not do that.

I would like to take this opportunity to make another

change that might be appropriate, but it does not even give any leverage.

It is not likely had a chance --

maybe someone disagrees -- of

doing well in a lawsuit.

we have good representation and would do as well as we could do. But I do not see why we would

not pass this ordinance,

eliminate the litigation risk, and then move forward with any other appropriate changes to public financing.

**supervisor farrell:** first of

all, if the legislation is as advertised, to piggyback a

little bit on what supervisor

elsbernd is saying -- if we are only raising taxes for the

supervisor races, that is the most self interested cap we could have.

what about the mayoral race, or the sheriff's race?

Look at it as a whole.

Otherwise, we will degrade the

reputation of this board, if we

pass what I agree is very self interested legislation about next year's

supervisor races, which will affect many on this board. One thing that drives me crazy

about this debate -- this has

been from the get go about complying with the lot and the supreme court.

We are bound as the board of supervisors by the U.S. Supreme court.

It is not about protecting the advocates and making sure their voices continue to be heard.

That, to me, is interesting and part of the dialogue, but it is

not what we are doing here, and

i do not know why we are passing legislation that is to protect the advocates.

**Supervisor avalos:** along the lines of protecting the

advocates, I will say, actually, the effort to create

the public financing program

came out of the process I feel is important.

last week, I was supporting supervisor farrell's

amendment

because there was an absence of thought for the community that

came together to create a

program about what to do about the supreme court decision.

i supported the amendment coming forward.

Since that time, there has been a lot of discussion.

I wanted to harken to that discussion and find a way to

bring up a new amendment.

What I believe supervisor kim is

proposing -- I am not sure it is the answer, but I do think it needs to be vetted with a lot of the

designers of our public financing program, with whom I

worked to find an amendment to harmonize with the board of supervisors was going to do with the mayor's

program back in 2007.

There has been a process I feel comfortable with.

i do appreciate your bringing

this forward, supervisor

farrell, to answer the challenges from the supreme court decision, but I will be

voting against the amendment, looking for a new version.

Supervisor kim's is probably a start, and we will be able to assess a new path for the future.

**Supervisor kim:** I want to respond to some of the new comments that were made.

This was a novel part of the law, put forward in June.

Many of us were unprepared to answer to the supreme court ruling.

i wish we had taken time earlier

to get more feedback to this issue.

I just want to acknowledge that.

The reason we did not address the mayoral race was not because

we did not want to, but because

we wanted to introduce something today.

In the next 30 days, ethics may

make a recommendation related to the mayoral race.

We wanted something quickly, today. This allowed us to move forward

with at least next year's race.

This is not about protecting the advocates. I think it is more about style.

For my office, when we write

legislation, we do a lot of

outreach to our communities, and too many folks who care about

the issues we work about. We want to make sure we have support for anything we bring forward to the board.

We spent expensive time speaking

to folks and coming up with a -- expensive time speaking to folks and coming up with a policy

proposal people felt comfortable with. We want to honor process.

People really wanted a public backing. They want to come to the board

to speak in public comment about this.

For me, it is about valuing

community input, and honoring the designers and authors of this. If you want to say it is not

about whether we support public

financing -- I do not know whether the author's support public financing at all.

I do not know whether this is just about the supreme court ruling. I think this is a larger dialogue about the future of public financing.

For me, I think it has been an

important government reform, bringing more integrity to the electoral process.

For me, protecting that is of the utmost importance.

More than helping anyone in this

room today, I am looking for future candidates that will come

out of neighborhoods and running

grass-roots campaigns, which this really benefits.

It makes sure we have a wider variety of folks who feel they

can run for office and represent the communities here in city hall.

**Supervisor cohen:** thank you, colleagues, for your comments.

I would like to speak to the many members of the public that

are here today, to explain what is happening.

The united states supreme court

issued a ruling that brought our public finance law out of compliance.

The debate you're hearing right now is should we follow the supreme court ruling.

if we should not follow the

supreme court ruling, what does that mean for san francisco?

Let me tell you what it means.

It exposes us for a lawsuit.

Do you know who foots the bill for a lawsuit?

The people in this room, the taxpayers.

I find it frustrating and disingenuous that we have

members on the board who do not

mind spending taxpayer money to make a point.

I understand public financing is

important and critical. I worked hard last year.

I was a publicly financed candidate. I agree it should be there.

but there is a comingling of issues here.

The issue we need to vote on, which we need a vote for, which

supervisors elsbernd and farrell

put forth, brings us into

compliance, so we are following the law.

we are not above the law here.

There are members using this as

a wedge issue to continue to

carry the torch and move forward some kind of agenda. It is wrong.

The supreme court -- the supreme court has issued a statement

that forces us -- our council --

council has advised us on what  
would be right and cost- effective.  
April through June, we heard debate on the budget.  
We made severe cuts to service  
providers, homeless advocates, adult aid health care centers.  
We have fewer resources to  
squander away on a potential  
lawsuit that is an uphill battle that we cannot win. Can you believe this?  
i hope, for those of you that  
get up and start making public  
comment, you take this into consideration, and remember which supervisors are voting on this issue.  
All we are doing is complying  
with what the united states supreme court has already brought down. Thank you.  
supervisor campos: thank you.  
I want to agree with a couple of points that were made by  
supervisors farrell and eslbern  
-- elsbernd, in terms of the scope of the legislation.  
i support what supervisor kim is  
proposing, but we must have a  
broad peace of legislation addressing what happens in the  
mirror -- mayor'  
s race, the sheriff'  
s race, and any others.  
I will support this, assuming there will be changes were needed. I believe the mayor pay for race is one of them.  
-- mayor'  
s race is one of them.

**Supervisor chu:** I want to think  
supervisor -- thank supervisor  
cohen for your comments.  
i think it is spot on.  
This issue of us not having a  
process or not a complete one --  
to be honest, the process we went through to have this initial proposal was a public process.  
It initiated from the ethics commission. The ethics commissioners voted on it. It came to our board.  
it was vetted to our process and  
had public comment period to behave as though this was not a  
process that was complete or thoreau is inaccurate.  
I want to make that point.  
About process -- even if we  
voted for this, that does not  
prevent another public process to figure out how to improve public financing.

Using process as an excuse to

not deal with an impending

litigation risk is irresponsible and inaccurate.

That is the comment I would like to make.

President Chiu: supervisor cohen, are you still on the roster?

**Supervisor cohen:** I am back on their roster.

It is going to be a long night.

This is only item 11.

In the interest of transparency,

when we cast our vote -- pay

attention to some quick math.

Who is up for reelection? Where do they vote?

Do not get me wrong.

Public financing should be revisited.

The point I do not think I made

earlier -- supervisor kim is interested in assuring the discussion around public financing.

It is a very important.

I agree with supervisor farrell

about being equitable in which offices we consider, if we are

going to offer public financing.

An equal playing field should be

equal for everyone, not just supervisor races.

I am not sure which races are up for reelection. Actually, I do.

But I do not want to call up my colleagues. Trust me when I tell you that

those who are in favor will be

voting with supervisor kim on her ordinance.

i am asking you to be mindful of that when it comes time for

elections, like supervisor

elsbernd said, being self interested. I think it is deplorable.

The issue is we are out of compliance.

We as san franciscans, the city and county are not following the law.

We need to cast a vote so we can follow the law like other jurisdictions are doing across

the country, like supervisor chu

said, and then we can have a conversation about public financing. It is critical that those who are not connected and do not

have family money can run for office as well.

That is the true spirit of public financing.

Supervisor

**weiner:** I want to disagree with a couple of the comments that have been made.

With some of my colleagues i

will be voting with today, I disagree with the viewpoints made.

It is worth -- we should be looking at our public financing statute to see how it can be improved.

The fact is, the board of supervisors -- we are the ones who ultimately have to legislate it. If that means raising a cap or doing whatever we have to do, it is our responsibility to look at that legislation.

Even though people will call us self interested -- part of being a supervisor is you get called every name in the book, with no basis.

We have a responsibility to take a look at the ordinance from time to time and see if it needs to be updated, if the cap needs to be changed.

I am comfortable doing that.

I think supervisor -- thanks supervisor kim for raising that issue, which is worthy of discussion.

what supervisor campos said made me nervous. I appreciate wanting to broaden the discussion and look at every aspect of the public financing ordinance -- supervisor, mayor -- that make sense as a global approach.

It also makes it a more complicated, long process.

we have what is apparently an unconstitutional provision.

The longer we let this lender, the more litigation and money risk we have.

The more I am hearing, the more convinced I am that we need to take action today, fix what we need to fix, and then move forward with a good process to update our ordinance.

**Supervisor kim:** thank you.

I just wanted to respond to comments about the process.

It is true that we went through the regular public process for vetting any legislation here in san francisco, but you can do what is the normal course of public hearings, or you can do intentional outreach on legislation.

That is what I am imagining.

I know that is not the top priority of every office, to do outreach to advocates and folks that originally defined legislation, but that was not foreign to our office, and that is why we are moving forward with a hearing process that would engage all the folks we reached out to.

But I do want to acknowledge this did go through a public process, and what we did at minimum.

I am more than happy to talk to the ethics about other city races in san francisco.

Some of our offices, like school board, are also state offices.

I believe they are under different legal boundaries.

If my colleagues would like to

look at other races, like the

sheriff and the dna -- the da, I am happy to look at that and have an overall discussion.

I think raising the ceiling would have happened anyway, without us having to legislate

it at the time. Unfortunately, the supreme court

ruling made the trigger unconstitutional -- not the amount, but the trigger.

we have to move forward with this now, coupled with removing

the trigger portion, which is

unconstitutional, to protect the intent of our public financing

law, which is to bring on members of our community who

felt they did not have the capital to win office in san francisco.

i appreciate the comments about services for the homeless,

seniors, and the poor, but it is grass-roots candidates who them

advocate against cuts for the

homeless, the poor, and working families.

I do think public finance is integral in the whole process.

supervisor

**cohen:** yes.

Supervisor kim is correct.

The folks that benefit or could potentially benefit from public

financing are the ones that could advocate on behalf of

those that need the most advocating.

But, again, we are talking about a simple constitutional issue.

We are out of compliance. public financing.

Two separate issues that should not become an old or brought together.

We need to vote -- that should

not be coming gold -- be

comingled or brought together.

We need to vote and come into compliance, and then talk about a public financing structure.

Today, I hope I have articulated -- maybe I have not.

But I want to make sure we drive home the point it is not to

coming goal -- it is not to

mingled two separate issues.

one is not necessary to the other.

Our council has advised us.

Supervisors kim, weiner, campos,

farrell, ch

iu, and elsbernd are graduates from law school. Six attorneys.

**President Chiu:** do not forget eric.

**Supervisor cohen:** supervisor mar

is an attorney. You would think they would understand the importance of the supreme court. I am just a graduate with a policy major. I think we have some overachievers, people with policy majors and law school.

It is kind of sad we have all these folks with a legal education -- from harvard.

I do not know where eric went.

They are questioning the united supreme -- the united states supreme court on what?

And theological -- an

ideological principle that has

nothing to do with compliance and can be debated by the public in a transparent process.

**Supervisor kim:** my legislation

would comply with a supreme court ruling.

**supervisor avalos:** my mother

taught me that if I had nothing

nice to say, I should not say

anything nice at all, so I will

ask for 10 seconds of silence right now.

**President Chiu:** I want to bring all of this together.

Hopefully, I am the last person to speak on this topic.

first of all, I do support, as I

think we all do, fixing the provisions in our public

financing system that the

arizona case showed to have legal issues.

Because of that, as I indicated

last week, I support supervisor

farrell'

s legislation, and the

aspects of supervisor kim' s legislation that do the same thing.

I think all 11 of us want to address the constitutionality.

In order to minimize the legal and budget exposure, we should do this as soon as possible. that is why I am prepared to vote on that today.

That said, and support efforts

to amend public financing rules to adjust to the new reality.

I look forward to the work the ethics commission will do.

Hopefully, in a few weeks, we

will have another version we can

consider, based on what happens today. It is important for the public

to know I think every member of this board does support

addressing the constitutionality issues that were raised.

Regardless of the outcome of  
this boat, that should be clear.  
Whether we resolve that today or  
in a couple of weeks, I believe that will get resolved.  
I want to and with that. Are there any further comments?

**Supervisor cohen:** no comment.

**President Chiu:** unless there are  
other motions, could we take a roll-call vote on the ordinance as proposed?

**Supervisor cohen:** aye.

**Supervisor elsbernd:** aye.

**supervisor farrell:** aye.

**Supervisor kim:** no.

**Supervisor mar:** no.

**Supervisor mirkarimi:** no.

**Supervisor weiner:** aye.

**Supervisor avalos:** no.

**Supervisor campos:** ho.

-- no.

**President Chiu:** aye.

**supervisor chu:** aye.

**President Chiu:** given that this  
ordinance would have required eight votes, the ordinance fails.  
Supervisor kim will be introducing her ordinance, which includes many aspects of what  
supervisor farrell proposed  
today, as well as other changes  
to the public financing system that the ethics commission will be reviewing in a few weeks.  
Let us move to the next item, item 12.

>> ordinance authorizing  
settlement of lawsuits  
involving mitchell engineering, and authorizing bonds and  
appropriation of funds not to  
exceed \$15.75 million.

**Supervisor cohen:** aye.

**Supervisor elsbernd:** aye.

**Supervisor farrell:** aye.

**Supervisor kim:** aye.

**Supervisor mar:** aye.

**Supervisor mirkarimi:** aye.

**Supervisor weiner:** aye.

**supervisor avalos:** aye.

**Supervisor campos:** aye.

**President Chiu:** aye.

**Supervisor chu:** aye.

>> there are 11 ayes.

**President Chiu:** items 13 through 15.

>> resolutions authorizing the general manager of the public utilities commission to execute various amendments to increase engineering project design services in amounts not to exceed \$14 million, up \$15 million, and \$16.50 million.

**president chiu:** without objection.

>> 16 and 17 authorize the general manager of the public utilities commission to execute amendments to increase the new tunnel construction management services agreement, not to exceed \$17.50 million and \$34 million.

**president chiu:** same house, col.

-- same house, same call.

>> 19 authorizes designated

officers

-- 18 and 19 authorized officers and employees of the city to examine sales and transactions and use tax records.

**President Chiu:** this item is adopted.

>> item 20 authorizes the department of public health and the purchaser to contract with the community health authority to provide payment services for the healthy san francisco program.

**President Chiu:** same house, same call.

>> item 21 authorizes the department of public health to except and expand a grant to fund -- I accept and expand a grant to fund health services through August 31, 2012.

**President Chiu:** this item is adopted.

>> item 22, making findings under the california environmental quality act, approving a new market tax credit agreement with the community development corporation in connection with the new sf jazz building.

**Supervisor mirkarimi:** I would be more than happy to defer to supervisor kim.

**supervisor kim:** I want to introduce an item amending item 22, thanks to our budget adviser, harvey rose, who did a report on this item.

We agree with his amendments and are offering them to the board.

**President Chiu:** is there a second to that amendment?

Seconded by supervisor mirkarimi. Any discussion?

Without objection, those amendments are made.

**Supervisor mirkarimi:** I would

like to note that in the budget committee I pointed out that

this is a very important, I think, addition to this part of our city.

It rests in district 6, but borders district 5.

It is the building of sf jazz, which I think was very important

that it build a relationship

with the fillmore jazz corridor

and businesses, and the academic interest, and trying to resuscitate that corridor.

If that had not been the case, that this institution that is proposed to go on franklin

street be more vigorous in the establishing of the

relationships with those in the fillmore area -- people should

be reminded, if they have

forgotten, that west of

mississippi, san francisco was

the jazz harlem in the united states.

that is something I do not think

we should undermine, and should capitalize as much as we can. This addition to this neighborhood helps do that, as

long as it is well done.

I put on pause the community benefits agreement, which I thought was insufficient for this particular building.

i have asked both redevelopment and the architect to this

proposal to come back with a better community benefits agreement.

If I could through the President Bring up redevelopment to speak on this?

>> good afternoon, supervisors.

I am the deputy executive director of the san francisco redevelopment agency.

I am also chief operating

officer of the san francisco community investment fund.

**Supervisor mirkarimi:** I want to say thank you, because it was

just last wednesday we asked for

a quick turnaround in helping us

revise and upgrade the agreement presented to us.

I think some improvement has been made. I appreciate that.

And I want to thank my office

for helping take part in that negotiation.

And I think supervisor came for her support.

-- thank supervisor kim for her support.

In terms of what is today, we

realize the agreement must be solidified by October 11.

What is attached is a community benefits agreement.

So this is the proper time to move the whole enchilada.

I ask one zip code to be added.

I ask that you also add 117.

The rest comports with our

interest, I think, in trying to at least take care, for those in

the film more western addition, who are struggling to bring

back attention in a jazz

historical way -- I believe this institution can add to that. >> I also want to thank

supervisor chu, who advised that they and service if they do not

comply in the community benefits.

we were able to negotiate that in this process.

**Supervisor mirkarimi:** that is a good point. I will not go into all the details, but it has been impressive. >> thank you very much.

**Supervisor chu:** I just wanted to make a comment about why this item came out of committee without recommendation.

Overall, it is a new type of

program we have been using in the city.

Typically, we use redevelopment credits, but this is a new market tax credit.

It allows san francisco to use tax credit to attract capital

investments in to certain neighborhoods.

one reason it was scheduled so quickly is there was a timing

issue with potentially lose in other funders for the committee.

We scheduled it in committee,

but did not yet have a budget

analyst report, so we moved it without recommendation pending the report. Since that time, you have received the report.

it came out yesterday.

Supervisor kim made amendments.

One of my concerns is the city

would be on the hook, that there is indemnity.

What risk will we be taking?

Previously, it would be the redevelopment agency indemnifying a contract. Currently, it is the san francisco general fund.

After conversations, I have learned the risk is minimal.

It had to do with whether our

city department heads and the redevelopment agency -- if there

is fraudulent activity that happens.

For the most part, many of the items that would constitute a

recapture -- if we were not in compliance with one or two of

the items, we would have time to fix that.

Because the risk is very low,

because the project is positive  
in terms of community benefit,  
because we are leveraging \$7.60  
million in tax credit from the northern community loan fund, \$5  
million from the property fund, and others, I think this is a good deal for the city. I hope you support it.

**President Chiu:** further discussion?

**Supervisor kim:** I want to express my support for this project.

I am excited we are bringing a jazz center to san francisco.

Jazz is an american classical form of art.

It is good to honor that next to

the symphony, the opera, and other arts institutions.

I want to thank supervisor

nurjarunu -- mirkarimi.

These benefits specifically come

for benefits in low income communities.

We want to make sure our

community benefits agreement is targeted for the communities where jazz has historically been  
a large part of the history and tradition. i appreciate your work on that.

I am excited to see this project

open, I believe next year, in the fall.

**President Chiu:** is there further discussion?

Can we take these items same house, same call?

Without objection, this is adopted as amended.

>> item 23 is from the city operations and neighborhood services committee, without

recommendation, an ordinance amending the administrative code

to prohibit limited services pregnancy centers from making false statements to the public about their services.

**President Chiu:** is there anything you want to say about this measure?

**supervisor cohen:** thank you, President. I am still collecting myself

over here about item 11.

I would like to move for a continuance.

**President Chiu:** to what date?

**Supervisor cohen:** one week.

**President Chiu:** that would be the 18th -- two weeks, given we are not here next week.

**Supervisor farrell:** I would like

to be added as a co-sponsor.

**President Chiu:** unless there is an objection, this item will be continued to October 18.

Item 24.

>> a resolution responding to the judge of the superior court

on the findings and recommendations in the civil

grand jury report entitled

"hiring practices of the city  
and county of san francisco,"  
urging the acceptance of the findings and recommendations through the department heads.

**president chiu:** any discussion?

Without objection, same house, same call? This resolution is adopted.

>> item 25, responding to the  
presiding judge of the superior  
court on the findings and recommendations contained in the  
report "san francisco' s ethics commission -- the sleeping watchdog."

**supervisor elsbernd:** I think I  
have been informed -- I know I have been informed that there is  
a mistake in the file in front  
of us, and the committee disagreed with the  
recommendation, recommendation four.

Excuse me. Finding four. No?

Recommendation number four.

**President Chiu:** supervisor makes a motion we disagree with that finding, which is my recollection of what happened in committee.

**Supervisor avalos:** I will second that motion, and that is the correct representation of what happened in committee.

**President Chiu:** the motion has been made and seconded.

Without objection, the amendment will be made.

On the underlying resolution, as amended --

**supervisor elsbernd:** just to be  
consistent, recommendation 7,  
which the committee agreed to,  
to maximize transparency and  
broadcast meetings on sfgov  
television, I like the previous item, where there was a recommendation to hire a new employee. You put in language that  
suggested we agree with this  
legislation, subject to our  
typical budget process and insuring dollars are available. I would like to see that language year. I do not like to write a blank check.  
i would suggest we amend the  
resolution to include language  
similar to item 24, which says we agree with recommendation no.  
-- number seven  
, subject to the budget process.

**Supervisor campos:** something related to this -- I am  
introducing today an ordinance that would require the ethics commission meetings to be  
broadcast on -- be broadcast on  
sfgtv.  
Obviously, whatever is done must  
be within the confines of the budget.

it is my hope and believe this

is such a priority that the ethics commission should move forward. My understanding is they are already committed to doing that.

I do not know that I object to

what supervisor elsbernd is

saying, but I do know -- do not

know whether the ordinance changes that.

**Supervisor mirkarimi:** I want to

remind folks we have passed legislation where we compel that

everything of commissions that are not televised car audio

stream to -- are audio streamed now.

it has taken a long time to get that up and running. The ultimate goal is to

broadcast on tv, but we audio

stream all the important ones, like ethics.

**President Chiu:** there is a motion they should be subject to --

**supervisor elsbernd:** on page

two, line 19, add the clause,

taken from the work on item 24, that says "within the constraints of the budget."

if we are going to do it on one, we should do it on the other.

**President Chiu:** without objection, the motion passes.

**Supervisor avalos:** actually, I

would like to keep it -- I do

not want to support that language. I would like to go to roll call

vote.

I think it has been before us

over and over again in this body whether to televise the ethics commission.

A lot of us have said it should be. I think we should make that statement clear.

It always comes down to a question of whether we have money.

I think we should make that determination.

But I like the language without the amendment.

**president chiu:** with that, I

think supervisor avalos would like to rescind that last boat.

Seconded by supervisor elsbernd.

On the motion to amend, is there further discussion?

If I could speak for a moment, I absolutely support our colleagues that want to make sure these meetings are

televised, and I understand we are going to find the budget to do that.

I think it is appropriate, what

supervisor elsbernd

has stated, but I am also supporting supervisor campos'

s legislation.

**Supervisor campos:** I understand

what supervisor avalos is saying, but I do not think it

prevents us from moving forward

to ensure these are televised.

I think the ordinance I am

introducing will get us to that.

But I certainly appreciate the perspective.

**Supervisor avalos:** I just think it makes a more definitive statement without the extra language.

I have been asked over and over again about whether the ethics commission meetings should be televised. I just want to make it clear.

**president chiu:** on the motion to amend?

**Supervisor cohen:** aye.

**Supervisor elsbernd:** aye.

**Supervisor farrell:** aye.

**Supervisor kim:** aye.

**Supervisor mar:** aye.

**Supervisor mirkarimi:** aye.

**Supervisor weiner:** aye.

**Supervisor avalos:** no.

**supervisor campos:** aye.

**President Chiu:** aye.

**Supervisor chu:** aye.

>> there are 10 ayes, one no.

**President Chiu:** the motion to amend passes.

On the underlying motion, a roll-call vote.

-- motion, a roll-call vote.

**Supervisor cohen:** aye.

**Supervisor elsbernd:** aye.

**Supervisor farrell:** aye.

**Supervisor kim:** aye.

**Supervisor mar:** aye.

**Supervisor mirkarimi:** aye.

**Supervisor weiner:** aye.

**supervisor avalos:** aye.

**Supervisor campos:** aye.

**President Chiu:** aye.

**Supervisor chu:** aye.

>> there are 11 ayes.

**President Chiu:** adopted as amended.

>> item 26, acknowledging and accepting the union square business improvement district

gift of a, not -- of a promenade.

**President Chiu:** why don't we skip over our special orders at 4:00?

and moved to -- move to the

non-controversial item 43.

>> this was referred to the

board without recommendation as a committee report.

It amends the administrative code to clarify that only

amounts actually paid to provide

employee health care services

shall satisfy the employer expenditure requirements of the health care security ordinance.

**Supervisor campos:** thank you, Mr. President.

I guess yet another unanimous

court -- vote at the board of supervisors. This item has been before us

many times, debated over and over again. I am going to spare the

discussion -- I am happy to

engage in the discussion, but I believe the facts are clear.

We introduced the original

legislation in May of this year. This has had a number of

hearings, not only at the government audit committee, but

at the health commission, the

small business commission, and the board.

People have tried to complicate this issue, but it is simple.

It is about protecting the right of workers to have health care.

It is about protecting consumers.

I would simply ask for a vote.

Before I do that, I want to make a clarifying amendment.

It is an amendment that

clarifies that when we talk about the termination of these

accounts -- the closing of these accounts happening 18 months

after termination of employment

-- clarifying that it is a

definitive amount of time, at 18

months past employment, whether

or not there is activity in the account. That is in response to a number of concerns that have been raised by the business community.

I want to make sure there is certainty and clarity on that.

On the spirit of compromise that

has guided our approach, I make a motion to amend the legislation along the lines of

this document that I am

circulating to all of you, which makes it clear that the accounts

will be closed 18 months passed termination of employment. I make that motion.

**President Chiu:** is there a second?

Seconded by supervisor farrell.

Any objection to the motion to amend? Without objection.

**Supervisor farrell:** I will keep my comments short, because the writing is on the wall with the amount of co-sponsors.

For those of us who will be voting against this today, it is not because we do not recognize the need to cure what ails us, or that there are problems with the current ordinance.

I will speak for everyone in saying it is about protecting jobs.

For me, our report we received in city hall about potentially losing up to 400 jobs in san francisco is unacceptable.

A job killer is not something I want to support.

i wish it had gone through more of a process.

But we are where we are. It will be interesting to see where we go with this, legislatively.

I appreciate what supervisor

chu has introduced, and mayor lee.

i look forward to the dialogue, going forward.

**Supervisor weiner:** one of the

great things about having passed a health care security ordinance

to the board several years ago, instead of passing it on the ballot, which has happened with some other pieces of complicated

economic regulation, it is it

gives us enormous flexibility as

the time for change -- as the times change or loopholes become

apparent -- to fix those, and to do it in a way where we are

bringing everyone to the table,

working with labor, the business

community, large businesses,

small businesses, unions , and to find something that works economically and protect the values we cherish.

That is this opportunity.

there is a way to fix this loophole, and to do it in a way

that does not unnecessarily

harm businesses, particularly

small and midsize businesses.

It has been disappointing to me

that the middle ground that

president pi -- c

hiu has been advocating, that I have been

advocating -- that it has not happened.

We have lines drawn in the sand.

I appreciate supervisor campos' s

dialog and changes, but it is not enough.

I continue to support the position that we fix this

loophole in a way that works for

all involved, including workers  
and businesses, where not everybody gets everything they  
want, but we are able to address the issue. I will not be supporting the  
ordinance today, and I will be  
supporting a future effort we  
have all been talking about to  
address this in what I believe is a more reasonable way.  
Supervisor elsbernd: thank you. I just want to follow up a  
little bit on supervisor weiner'  
s points as one of two members of this board that  
served during the passage of the health care security organs.  
That process was extraordinary. We work with everybody.  
I was one of the last people who agreed to support it.  
Labor and community representatives came to talk to me. How many visits do you think I got on this? not one.  
The process on this is not  
comparable.  
Whether you have a good process  
or bad process -- I just want to  
make the comparison is nowhere close. When the sponsor of the legislation tables their own  
item right before we go on  
recess, and that motion passes  
9-2 -- it was safe for me to  
assume it was not going to get jammed through after that.  
I think a lot of other people recently assumed that. I think there is a question of timing, and the elephant in the room.  
There are a lot of people who May disagree with this point.  
But I do not think it is a  
coincidence there is a mayor' s  
race five weeks from today.  
It is what it is, but let us not say this has been a great  
process comparable to the original legislation. that was a great model.  
I give a lot of credit for that. There is not any credit to the process here.  
This does poor service to the issue of process.  
I do think supervisor -- thank  
supervisor campos for making  
mention of the hearing at the small business commission.  
I will add that they unanimously rejected this item.  
Not a single vote from the small business commission.  
That was not the case when we pass universal health care.  
We are not talking big business downtown.  
Small businesses, the people

hurt in the most, unanimously opposed this.

The last piece -- working on the

pension issues, we spent eight months.

That is a billion dollars sacrifice for labor.

We spent eight months getting there, and we are not quite there. This measure, should it be approved, is half a billion for

the business community, and it will be thrown through with very

little discussion, very little discussion.

\$50 million a year times 10 is half a billion dollars for business over the next 10 years.

Look at this process.

not the best way to encourage jobs.

Not the best way to encourage a business climate in san francisco.

I really think if the intent is

to fix this, we can do a lot better.

**Supervisor campos:** I heard from a number of colleagues who asked me to keep the presentation short, because there has been a lot of debate.

What is interesting about the discussion of the process is that everyone has a right to their opinion.

I think assembly member amiano would have a different perspective in terms of the

process we have followed, and the five months we have introduced this legislation.

there are two points that at the end of the day come down to explaining why this is the right

approach to fix what everyone acknowledges is a serious problem.

I point out that for quite some

time folks in the chamber of commerce and the business community were not saying there was a loophole.

In fact, the word loophole was

not being used for some time.

I am glad that now people admit a loophole exists. But there are two points that go

to the heart of why this is the

right approach, and why, notwithstanding the efforts to

modify and compromise, there are fundamental differences of opinion.

One has to do with whether or not we actually cap the amount

of money that a consumer pays for and an employee is entitled to when it comes to health care.

The chamber has proposed that we

cap that amount at four

quarters, or one year. The problem that many of us,

including a coalition of labor

and business, have with that approach is that if you cap the amount that is accumulated in

these accounts, it means that at

the most an employee who is

lucky enough to accumulate the

entire amount, \$4,300, is only

able to accumulate \$4,300.

That is a problem, because if

you look at the cost of health care in san francisco, you are

talking about a situation where

very little could be provided to that employee if that is the only amount available to them.

The average night at a hospital in san francisco is \$20,000.

The average mri in san

francisco costs \$7,875.

\$4,000 would not cover any of that.

if a woman gets pregnant and wants to have a normal delivery

in san francisco, assuming there

is no see section -- c- section,

that woman has to pay \$16,097.

The amount of coverage would not cover that. God forbid you have kidney

stones or a urinary tract infection in san francisco.

That is \$40,000.

i personally believe that what consumers are paying, as consumers are being charged to

pay -- the expectation is that workers will have basic coverage.

I do not think you can say basic, adequate coverage is being provided, when all you are giving is \$4,000.

that is the first fundamental difference of opinion. There are those of us who

believe it is not right and does

not make sense from a public policy standpoint to tell a full-time worker you cannot

accumulate more than \$4,000,

given what health care costs in san francisco. That is the first thing.

The second thing is that my

proposal is the only proposal which requires that when a

consumer pays money, as they do

at restaurants, that every cent the consumer pays is spent on health care.

I believe that when you go to a

restaurant and the owner makes a representation to you as a customer that they are going to

provide health care to the

workers of that restaurant, that every cent that you pay on that

bill should go to health care, as represented.

Mine is the only proposal that does that.

This is not just about protecting workers.

It is about consumer protection.

the law is very clear.

You should meet the representations'. You should fulfill the representations' you make to consumers.

-- you should fulfill the

representations made to consumers. I hear from san franciscans who

are shocked that money does not go to health care, but is pocketed by these businesses.

I do not think that is right.

In a sense, those of us who are taxpayers in san francisco and go to these restaurants are paying twice.

Not only are we paying as talks

-- as customers, but as taxpayers.

When a worker does not get

health care, the worker goes to S.F. General, and the taxpayer must foot the bill.

Those are the fundamental differences of opinion. That is why this coalition is moving forward.

We have tried to negotiate.

We have met many times with the business community.

At the end of the day, there is a fundamental difference of opinion.

I believe that at the end of the day this legislation not only

complies with the letter, but

the spirit of the original law,

which is why I am proud to have support of the original author

of the ordinance, tom amiano.

**Supervisor avalos:** I would like

to thank supervisor campos for bringing this measure back.

I was with a lot of community and labor organizations that

worked on the original ordinance passed in 2006.

If we had known this would be an

issue, that there was a potential loophole, we would

have made sure it was closed at that time.

I look at this as fulfilling the

original promise of the health care security ordinance. I will be supporting the measure.

I think it is important also to

say that a lot of the work, the

fund is being developed, --

funds being developed, were made because workers made the work to make that happen.

They are contributing to the success of the businesses that I think they should be able to

share in the ability to have health care with everyone else in the city of san francisco that has it.

I want to make sure we honor the workers and what they are able to produce. and to make sure they have that

access that has been somewhat

denied in with what is available to them to spend on health care.

**Supervisor wiener:** I want to

respond to one thing the

supervisor campos said about the

purported health care charges that people pay in some restaurants.

When you have a restaurant that is charging a charge and labeling it as going to help the san francisco or for employee health care and it is not going there, that is not defensible.

I certainly do not defend that.

if there is valid legislation , I am all for that because restaurants that do that should

not be doing that, they should

call it something else and not  
mislead consumers into thinking it is going to health care. It is not doing that.  
It is really important to keep  
in mind, and I do not know if anyone has done the analysis when you talk about all the businesses that are paying into our health care security  
ordinance, the percentage of them at the restaurants that apply that charge is a very small percentage of businesses. Not all restaurants do it.  
I have yet to see a non-  
restaurant. The businesses that i  
patronized, food or otherwise, the percentages that do that are exceedingly low.  
The fact that there is a small percentage of covered businesses  
that are doing this is not a reason to support this ordinance. The other businesses that are not doing it should not be swept  
in with that kind of conduct.  
if we want to address that, we should address it.  
These are, in my mind, issues  
that I understand there are some overlap. But they are not completely overlapped.

**Supervisor kim:** thank you.

I do appreciate all the comments that were made. It is a very complicated issue and I think that we have gone through several months trying to figure  
out the best solution to

address this loophole in our health care ordinance.

I want to say a couple of things. When this ordinance first came  
out, I was on the fence about it korea I was worried for many of our small businesses who want to  
support in their ability to meet  
this legislation hand closing the loophole. There are a couple of things  
that turned my mind toward supporting this. One was meeting with many of the  
workers to -- whose businesses  
opted into -- hra for health care.

During the workers knowing they did not have access for funds and being told that they could not spend it on basic health care needs like dental  
visits,

which was, to me, astounding.

The comments about this being a sledgehammer way of approaching

this instead of finally tuning a more nuanced piece of legislation, I will bring up a conversation we have been having extensively about increasing our  
exposure to litigation.

Unfortunately, we live under

federal laws as well which limit

our abilities to mandate employer-employee relationships. the purpose solution would have been mandating that employers

had to spend -- had to allow their employees to spend on these basic things.

And to enforce notification.

These are things that increase our exposure to litigation. For many of our board members

who are worried about exposing taxpayer dollars to risk, in

many ways, this legislation is the only proposal that I have

seen thus far the response to closing the loophole and

minimizing our litigation risk. The last thing I will say is that anything can be called a job-killer. We raised our minimum wage.

We have one of the highest in the country. that could be called a job- killer. If we have held the san francisco, that could be called a job-killer. When  
you look at the comptroller's report of the 36,000 jobs that we are

projected to grow over the next three years, we may, at most, lose 100-300 jobs. When you think about that in the overall context, I would rather have 35,700 jobs that pay a living wage and that afford health care to our residents because in the long run, that is the most cost-effective way to take care of our residents.

**Supervisor mar:** I do have empathy for the many who have been writing to us and calling and the commission's letter was very helpful. But to the broad coalition of labor and community groups that have worked with supervisor campos, it is not a complicated issue. It comes down to protecting consumers and making sure that every single penny gives access by workers to their health care. I like how supervisor campos broke down costs involved from pregnancy to a basic night in the hospital. That makes it very clear why this proposal is the one that is really about fairness and protecting consumer rights and especially workers' access to healthcare, which they need in this economy. I will be supportive of this ordinance and applaud the effort of the coalition. Thank you.

President Chiu: first of all, I want to reiterate my appreciation for the work of supervisor campos as well as the coalition that has brought these issues to our attention. I have always strongly supported our help the san francisco program as well as the original legislation. I am proud, as we all are, to live in a city where our employers have a legal obligation to provide health care to their employees. That being said, I do a thing that there is a way for us to accomplish the goals of making sure that all of our employees of health insurance but doing it in a way that does not result in fewer jobs.

I just want to lay out -- I have introduced an alternative that would be heard at our G.O. Committee in several weeks that addresses some of the problems we have seen today.

Employers who have not provided adequate employee noticed.

employers to have a defense -- have deceived consumers.

Also, the litigation risks that supervisor kim and referred to.

If anything happens legally to this health care security

ordinance structure, supervisor campos'

legislation would be the default. the real issue is, when you're

talking about \$50 million, as

supervisor elsbernd has targeted to be \$500 million over the next

10 years, we are not -- as he

has pointed out, we know that not all of this money is going to be used for health care.

We know that this money will sit in health care reimbursement

accounts, but tens of millions

of dollars of year will sit in

those accounts not necessarily used to employ san franciscans.

Of the last two years, san francisco have lost 30,000 jobs.

while it is true that the economic analysis shows that we

are calculated that there will

be 230-460 jobs lost next year, I do not think we can afford to lose those jobs here. What I'm hoping for is some kind of balance.

A balanced approach to we can move forward with. That being said, I look forward to continuing to work with our

colleagues, the labor community, the advocates, and the business community to move this to a better place.

**Supervisor chu:** I want to thank supervisor campos for bringing this problem to us.

I think it really opens our eyes to some of the things that we had not anticipated with the original legislation.

as you have mentioned, \$4,000 does not go very far. Coming from a family where my parents and I did not have

insurance for the most part, it really does not go very far at all.

I can appreciate how this is a

problem, especially for folks who really needed to do not have coverage anywhere else.

i am not convinced that this is

the right strategy but I look forward to working with you to

figure out how to tailor it in a way that could work for us all.

It is an important issue. I am interested in taking a look at whether we have any ability

to ask whether we can do an

accumulation method unless certain providers or businesses allow the money to be used for premiums. I do not know if that is an option at all. I was wondering if there was a

way to accumulated over and 18 deaths month.

-- an 18-month period.

there -- I agree there needs to be a fixture.

This is not a solution yet.

Unfortunately, I will be voting against this legislation.

Supervisor campos: --

**supervisor cohen:** there are a total of six co-sponsors.

i have found myself in the unfortunate position of being on a swing vote on this issue. This issue has been very heavy

and difficult to

pick sides.

i will be supporting this

legislation and I am an original co-sponsor so I will stick with it.

I believe that this, converse to was supervisor chu was saying, this is a step in the right direction.

although she is voting no, I will be voting yes.

But voting yes and looking very

critically at what the unintended consequences will be so that we can continue to

better our best and refine all ordinances, not just this

ordinance in particular, but all ordinances, so that we can continue to create an

environment that is both

equitable for all members and

also hospitable to small businesses here in the city and county of san francisco.

So I look forward to continuing to work with our business  
leaders, our labor leaders, the mayor' s office, as well as  
assembly member tom and colleagues on the board of supervisors. This is only the beginning. Trust me, this issue is very complicated.  
We will continue to fine tune it.  
I want to encourage members to  
continue to work together so  
that we can continue to better our best. thank you.

**President Chiu:** roll-call vote. H aye.

E no.

**Supervisor farrell:** no.

**Supervisor kim:** aye.

**Supervisor mar:** aye.

Supervisor mar: --

**supervisor mirkarimi:** aye.

**Supervisor campos:** aye.

**President Chiu:** aye.

**Supervisor chu:** no.

President Chiu: this ordinance is passed on the first reading. What'

Il we go to our 3:30 special ordinance?

We have a special commendation

from -- Madam Clerk, could you remind me who is from?

>> is from supervisor kim.

**Supervisor kim:** thank you. I think that there are people

out in the hallway so united

players and members of their family, I see you here. If you want to come in at this time.

Last wednesday, we had a loss in our community and our city.

eric in passed away on September 28.

He was a son, community member, artist, and worker for many of us in the city. And also a dear friend of mine.

Upon hearing on his sighting at -- upon hearing of a sudden

passing last wednesday, there was a community outpouring of

support, love, and sadness for

our loss.

E was not only someone who was a friend, but an angel in our community.

Someone who game -- sony gave

countless hours to our youth and

families, acting as a tutor who, working at united players for

many years, and also at west

egg and being one of the goodest

people I have ever met. I am truly saddened for his loss. I am sorry, I was going to try to keep it together. I know that many of our members and  
young people Miss Him as well.

I have a lot more to say about

him, but I do not think I can finish.

We have a certificate to honor

-- we have an immemorial -- an

in memoriam that is co-sponsored by others.

The amount of care that he had for citizens was unbelievable.

I have known him since his work

supporting artists and his love of music.

As a school board member, he would call me all the time to check up on students to see if I could help them.

In talking to counselors, I remember one student who was always late to high school because she had to draw of all for siblings to go to school. he was concerned because her grades were slipping.

He always made sure that people were looking out for all the students he took care of.

I just want to recognize his leadership and his love.

He is a mission high school

grad and a die-hard giants fan .

In remembrance of e, a dedicated community worker,

artist, and friend, he dedicated more than 20 years of

commitment as a youth manager and performance artist.

He was a man the was deeply and passion for his work and

community, for the people, and forth his family.

He is an unsung hero who will be missed but always remember her.

My apologies -- I tried to keep it together but I want to thank the community for being here

today to recognize someone who was our angel and friend.

[Applause]

president chiu: we have a couple of other colleagues the would like to speak to this.

**Supervisor mirkarimi:** supervisor kim'

s passion and sorrows before those of us who have known eric.

the day after he died I went

over to united players in on howard street.

A little shocked and unclear as to what happened. I wanted to speak to members of the community over there. I'

m still kind of processing y eric has passed. I have not heard exactly.

It is a mystery then and it appears to be now.

we are prepared and I want to thank supervisor kim for the recognition that she is applying

right now to present an in

memoriam when it comes to roll call.

United place was a community and eric was a pillar in the community. It is well known because of the

work that is done in the streets

that erik and united place has been essential in helping us take that to our streets in a

way that grass-roots would want to take back our streets.

And empower community where they had been disempowered.

i greatly appreciate the outpouring of support, greatly appreciate those who recognize

the true commitment and

contribution by eric and others

in the community of united place.

Today is a small recognition for that.

**supervisor avalos:** eric was also a resident of my district.

I want to acknowledge that and

the work that he has done has spanned many areas.

He was a part of organizing -- we had several peace marches of the last couple of years that

eric took part in and helped

sponsor building unity among the youth.

That is the same work that has been going on in the south embarcadero.

I want to abolish the love that

eric brought to the community and helped bring up a lot of young people whose lives are better because of his work. I want to thank him for that.

**supervisor kim:** I do want to recognize members of his family who are here today.

His sister, his brother, his brother, and his mother.

Many of our family' s first come

to the south of market, and as

supervisor avalos mentioned, our residents of district 11. If we could call up his family to receive a commendation on

behalf of e, and all the members of the united players, thank you for being here.

[Applause]

[Applause]

>> my brother eric was a great man. He still is to this day. He is up there watching over us

all like he was with all of the kids.

But yeah, nothing else I can say.

No words can explain how my brother loved the community, the

city of san francisco, and of course, the giants. I appreciate all you have done and thank you in. [Applause]

>> good afternoon everybody.

I want to thank the board of supervisors for bestowing this honor up on eric.

It takes that sometimes for us to recognize the people who really have an impact on our lives. I want to a college eric and

also there are so many people like him who work to make several cisco a great place.

he just did his work. He did not like doing

interviews, he did not want to be on camera. He just did his work.

Because that is what he believed in.

I just want to thank you .

This is for eric but i know eric would also want me to speak for those people that just do their work to make the city better. So I thank you.

This is a young man who would

like to say a few words.

>>

he was my case manager.

He helped me in my school work.

When I got in trouble, he always helped me.

He wanted me to graduate, so I' ve got to finish it for him.

[Applause]

>> thank you. And thank you for giving him this honor.

President Chiu:

thank you. thank you all very much for being here today.

>> I just want to say that I am his sister.

I'

ve known him for a long time growing up in san francisco.

We lost a great leader and a great son the other dead.

he is a friend and mentor to a bunch of the younger generation.

E wood of only like us to continue on the good fight, to make the city a better place.

That is our city, the city we

grew up in, the city went to the public schools and, that we currently live in, and I am

utterly proud to say that I know the family and the family will

continue in that will continue

to dedicate their time and souls to this great city in the will only make it good because of the salt of the earth, people like e.

izz, I love you like a sister.

Much respect to the family and this city that we call home. Thank you. [Applause]

**President Chiu:** thank you very much for the presentation. I think that concludes our commendations for today. madam clerk, could we go to roll call.

>> for soro call for introductions, supervisor cohen.

**Supervisor cohen:** thank you very much.

I told you it was going to be a long, exciting day.

In colleagues, here today I am excited in -- I am excited to introduce to you a menace to the planning code and zoning maps that facilitate the expansion

and relocation of a center for youth wellness in that they view. The center for youth on this is

a unique partnership -- was it something I said?

[Laughter]

the center for youth and

wellness is a unique partnership

between the california medical

centers, bayview health, they the child health centers, the stanford early life stress

research program and tipping point community.

These organizations have partner together to build a one-stop health and wellness center for

san francisco children and families.

The center for you bwana' s will combine pediatrics with mental health services, educational

support, family support,

research and best practices, and child abuse response under one roof.

unfortunately, what we have

begun to see is that youth in

the communities to suffer disproportionately from violence and poverty have not only

physical health needs, but mental health needs as well.

These impacts require a more comprehensive approach to

delivering public health services to our youth.

the center for public health juana's will be the first in the city to have a comprehensive approach to the physical and emotional needs of our youth in

the city who are business -- who are witnesses or victims of violence, all in one building.

Thank you Mr. Chair and Madam Clerk. The rest I submit.

**supervisor farrell:** thank you I have a few pieces of legislation.

I am introducing legislation that I crafted with our mayor's

office of housing which has their full support which I thank

them for to provide greater neighborhood notice and input for city development projects. Later today we will hear the appeals on the youth project in our district.

In my opinion, appeal that could have been avoided had neighbors provided breaded notice --

greater notice of the project and ability to provide input

before the product was set in stone. Specifically, this establishes

an e-mail often system -- opt-in

system where they can receive notifications for development that are funded by our city.

My hope is we can avoid the

debacle which has six -- which has unfolded over the last years in my district.

i want to specifically thank our mayor's office of housing for crafting the legislation. They have been great to work with and for their support on the legislation.

I am introducing a resolution

commending our golden gate

valley branch library reopening.

Originally opened in 1918, the

golden gate valley branch is a landmark carnegie library and is fully accessible, technologically updated, and has been transformed into a state of the art library designed to serve the neighborhood for many more decades to come.

The renovation has been a team

effort between the public library, staff and administrators, department of

public works building design and construction addition, a fine

line construction, taggard

architects, and in numbers of fish.

And members of the community raised funds and design the branch to sue their neighborhoods me needs.

I commend the library, the friends of the library, and the department of public works. Members of the surrounding

neighborhood and the entire team and made this writing so

successful for their dedication and hard work. I invite everyone to join us in the celebration of the rededication of the golden gate valley branch library on

saturday, October 15, at 1:00. The rest I submit.

**supervisor chu:** I have submitted my item.

**Supervisor wiener:** I submit.

Supervisor kim: --

**supervisor mirkarimi:** I submit.

**President Chiu:** I have a couple of items today. some have to do with neighborhood issues with in my district a. I want to first mention that the district I represent are many of

the densest neighborhoods not

just in the city, but in the west coast which the least amount of open space.

Like every neighborhood, we have challenges hanging on to

families and our family flight has been exacerbated by the

limited amount of open space and recreation space. There was language pass a number of years back by the board of supervisors that prevent buildings and structures from

being built on part parcels in my district.

That was meant to protect our open space, but it turns out

that it would also block the building of playground

structures on such parcels. I am introducing a technical piece of legislation to clarify

that hopefully someday, we can build playgrounds structures on some of this opens days.

I have a second item to request

a hearing on the status of the eight washington project. This is a product in my

district of the golden coast and barbary district neighborhoods. There have been many questions raised about this project regarding recreation and housing needs. I would like to ask for a

hearing so the questions can be answered.

I know there are a lot of folks who want to hear about what the current plans are.

the third item I am introducing today is an item that I have

worked with our city attorney as well of supervisor wiener on, which has to do with security in our city' s parking lots and in

and around our nightclubs. In the last couple of years, we

have passed several pieces of legislation to make sure that there is adequate security in and around nightclubs in san francisco.

In recent months, there have been requests made of us and by

the entertainment industry and nightclub owners in to consider security measures in and around

our parking lots, particularly those that are close to nightclub venues.

over the last few days, there was another incident of

violence that occurred in those spaces. The legislation that supervisor wiener and I are introducing

would require all parking lots to have a security plan.

For those who are within 1,000

feet of an entertainment permit,

to ensure that there is adequate

lighting, to ensure that exits and entrances are properly maintained, and to ensure that there is security during the hours of operation of these

lots and into the wee hours of the morning, which is where these incidences of violence take place. I want to thank supervisor wiener for his work on this issue and look for to his consideration.

**supervisor campos:** thank you.

Colleagues, as I noted earlier, I will be introducing an ordinance that will require that meetings of the san francisco ethics commission be televised.

I look forward to your support in that effort.

i know that there is a lot of interest in this issue. The key is that we want to

provide more transparency to the

very important work that the ethics commission does. The rest I submit.

**Supervisor kim:** thank you.

I had already mentioned this earlier, but I am introducing

legislation to amend our public financing laws.

I had spoken of it in detail about that previously during our discussion.

Basically, incorporating some of the amendments that would actually take out the portion of our public finance law that is now on constitutional by the U.S. Supreme court, but also makes steps to protect the intent of public financing, to continue to encourage candidates to participate and be able to allow candidates to run sufficient campaigns as they run for office.

I want to a knowledge my cosponsor, supervisor avalos, supervisor campos, and supervisor mirkarimi, and supervisor mar.

>> thank you, supervisor kim. Supervisor mar.

**Supervisor mar:** thank you, Madam Clerk.

Many of you have probably heard about the unfortunate stabbing death that occurred in the richmond district on monday morning. i wanted to ask my colleagues to close the meeting in more import dina and peter wu, two of the victims in the violent incident.

The passing of dina and her son

-- she was 73 and her son was 44. That passed in a domestic violence incident that occurred in monday morning in the richmond district, a few blocks from my home.

Mr. Dennis wu,

who was also

involved in the ascent.

They emigrated from china decades ago and have been very involved in the chinese community.

Dennis has served as the

President Of the wu family welfare association for several terms.

I will be joining the police commissioner at our police

chief and others from the

richmond area at a community

meeting this evening at 6:30 at

the richmond rec center.

The police chief will answer concerns about the incident and I and others will be there to give our condolences to the family but also make our communities safe and address issues such as domestic violence in our neighborhood.

The rest I submit.

>> seeing no other names on the

offer -- on the roster, that includes roll-call for introduction.

**President Chiu:** was going other two are four-o' clock special orders? The first hour like to call is the order about the edward the second project.

If you could call items 45 and 42 as well as an item 10.

>> persons interested in decisions of the planning

department and the commission's affirmation of the-declaration

adopted and issued on July 14, 200011.

projects located at 3151

through 3161 scott street.

Item 37 is the motion reversing departments issuance of the- declaration.

Item 38 is the motion directing the findings.

item 39 is the person' s interest of planning commission' s presentation on properly located

at 3151-3155 scott street.

Item 31 is approving the conditional use association.

Item 41 is disapproving the commission' s finding to approved the conditional use association. Item 10 has been called.

**President Chiu:** on today' s

hearing, we have to hearings on

the project of 3151-3155 scott

street, the edward the second project.

This would allow the creation of

25 units of housing, 24 of them for transitional aid to you from 18-24.

We have an appeal of the-

declaration.

There is an appeal of the conditional use authorization for this project. both of these have been brought by the same appellant, the county all association and

various other associations to. The issues on the appeals are different. Our consideration of the

appeals of the neg dec, involves

the inaccurate -- the inaccuracies and inadequacy of the declaration.

Six votes of the board are required.

Our appeal of the conditional use authorization involves an analysis of whether the planning commission' s determination to authorize the project was appropriate.

This hearing is quasi -- judicial

and nature and May require due process. to overturn planning or to

authorize the conditions, eight votes of the board are required.

While both hearings involve

distinct analysis, they relate

to the same project and the consideration of many members of the public that May wish to speak on one or both of these issues.

under consideration of the

appellant, the board, and itself, I suggest we consolidate into a single hearing.

In order to ensure that the

project sponsor and others receive a full opportunity to

address the appeals, I propose that we conduct the hearing as

follows -- first, the appellate will have up to 10 minutes to present their case for the appeal. The appellate will then have 10

additional minutes to appeal the conditional use application. Next, members of the public to support either or both of the appeals, meaning you want to

request to reject the neg dac or

conditional use, you missed but

-- you May be for up to 10 minutes on both of these issues.

Next, the planning debarment will have up to 10 minutes to present the analysis for certifying the neg dec and another 10 minutes to present analysis for authorizing the conditional use and planning unit development. following planning a presentation, the real party in interest, the project sponsor, will have up to 10 minutes to present their case for certification of the- declaration. The project sponsor will have up to 10 minutes confirming the authorization.

Following the project sponsor, members of the public debt which to support the issuance of the neg dec and the conditional use of -- conditional use authorization May speak for up to 10 minutes on both issues.

We ask the speakers to identify a particular appeal if they wish. Finally, the appellants will have up to three minutes for rebuttal in support of the neg dec appeal and the conditional use authorization. At the end of the hearing, we are considered by law to consider the question of the issuance of the-declaration and therefore, we will first vote on whether to affirm the neg dec.

In the event it is confirmed, we will then confirm or overturned the conditional use authorization.

Given that this relates to the conditional use authorization is quasi -- judicial in nature, we need to provide parties with due process for this entire proceeding.

Members May not be biased or predispose toward a particular option on this project.

all of us will be considering the same effects, records, and testimony.

Colleagues, any objections to proceeding in this way?

Let me ask the supervisor

farrell resided you have any official comment. Why don' t we proceed to the hearing? I will have four representatives from the appellants. if you could please set up.

As I said before, you have of 210 minutes to present your case for the appeal of the neg de3c c.

You up to 10 minutes for the appeal of the cu.

You can use all of that time or as much as you would like.

>> President Chiu and supervisors, thank you.

I represent the cow hollow association.

I will present the talking points regarding the final mitigated-declaration appeal.

then I will continue on to the

cu and, with President Chiu' s

permission, ceded the rest of my

time to a member of the cow hollow association.

The overarching point before us today is about transparency and consistency and processed.

The cha is entitled to a full and complete objective analysis under ceqa, rather than go through all of the points that

the association has put forward

or referred to you in the written materials and discussed what I think are the most important.

First, the city violated ceqa by

failing to perform required

analysis before approving the project.

Before approving a project

subject to ceqa, the city must

consider a final eir or neg dec.

The california supreme court has emphasized that ceqa requires

environmental review to refer to products first rather than final approval.

by lending its political and financial assistance to this

project, the city, as a

practical matter, has committed itself to the project.

In August of 2009, the mayor's office of housing issued a

notice of funding availability

for \$2 million for a housing project. C after.

Hp as the project sponsor, the

recommended an additional \$2.4

million to chp outside of the funding selection process.

in July of 2010, chp

executed a deed of trust and security agreement with the mayor's office of housing.

On July 20, 2010, the city

issued a notice -- rather, a certificate of exemption with regard to ceqa.

Finding that the projects

categorically exempt from further ceqa analysis.

On that same day, the mayor's

office approved the loan.

Within a few days, it became clear that the planning

department was -- had decided to not go forward with the notice

of exemption and instead began a study to determine whether the project may have significant effects on the environment.

December 2010, the city loaned

chp another \$2.2 million.

for a total \$4.4 million.

The money has been lent, the property had been purchased, but

it was not until July of this year that the mitigated neg dec

became final.

What we have here is a fait

accompli.

There is little room to argue

that this project would not go forward or will not go forward.

By committing \$4.4 million, it has subverted the ceqa of

process and deprived the cow

hollow association and other neighbors of their due process.

**President Chiu:** we have a question from one of our colleagues.

If we could roll the clock while he asks the question.

**Supervisor wiener:** thank you for bringing up this argument because it is one that I really do not understand.

i wanted to press you on it.

You cannot do ceqa until you

have enough shape around the

project to do a ceqa analysis. Is that correct?

In terms of the density, the traffic impact, and being able to study those kinds of things. Right?

>> correct.

**supervisor wiener:** if you decide

you want to support transition aged youth housing and this is a

great provider and we want to

start supporting the project and encouraging development, but it

is one to take us some time to actually figure out if it will

be 30 units, 70 units, 20 units,

100, is there one to be parking or no parking, and all the other

things that go into the final project.

Your argument that the city

cannot take any of those steps

ahead of time to work with the provider to come up with a

project without first undergoing

ceqa on a project that does not

exist because you cannot do ceqa on it, that is what I'm hearing and I am a little bit confused.

>> the issue is that the mayor's

office of housing loan \$4.4 million.

/

**supervisor wiener:** that is often the case. If you loan money to explore what the possibilities are.

There are a lot of transactions that happened before you have a product that is far enough along to be able to undergo a ceqa analysis.

>> to buy the building?

**Supervisor wiener:** that building

-- if you got -- if you do not know if anything can be done to that building, there are so many things that happened before you

have a building or a project that is tangible enough to

undergo ceqa that it strikes me that the argument you are

making, taken to its logical conclusion, would make it

impossible for government to

engage in any kind of project activities to move a project forward without undergoing ceqa even though you could not

undergo ceqa because the details are not finalized. >> I would respectfully disagree. There are many steps that the

city could take them a require

the expenditure of funds that would not, as a practical matter, require the city to commit itself to the project.

But by loaning \$4.4 million on a 55-year loan, and allowing the project sponsor to purchase this building, that is a commitment to the project.

**supervisor wiener:** what if the city did not load any money or a small amount of money, said \$100,000, to go through a process and spent 300 hours of staff time working with the provider to determine what kind of price would be appropriate?

Could someone take the position that that is committing yourself such that you would

have to undergo extensive ceqa analysis even though you do not have a fully fleshed out project

and appeal that to this board and file a lawsuit afterwards? That is what I'm trying to feel here. Where are the limits to your argument about these three-

commitments?

i do not see where you draw that line.

It strikes me as ceqa swallowing up the ability of government to do any kind of planning or partnering before you have a final project ready for presentation.

>> our position is that, by

loaning \$4.4 million so that chp

could purchase the building, it

is far beyond any preliminary

inquiry or planning stage.

It is a de facto commitment to

the project prior to ceqa- reviewed approval.

**Supervisor wiener:** how do you draw that line of? You're saying one thing, but I

could think of 100 difference in areas where someone could take that exact same position.

>> it is difficult to discern.

But here, it is not.

It is so far into the realm of tacit approval.

this is \$4.4 million we are talking about. A substantial sum of money.

**Supervisor wiener:** what if it were \$500,000?

>> I agree that there are facts out there that would make it more difficult and it would be nice to have a rule.

But that is now we are -- that

is not what we are arguing for today. We are arguing for the facts before us under the circumstances.

\$4.4 million is a commitment to the project.

**Supervisor wiener:** because there

is no rule, what your argument leads to is the possibility of tying up any project that has

any civic participation before

you have a ceqa-ready project.

Then you are pre-committed.

you said that, in the paper, you are pre-committed.

I can see many different scenarios were this is a problem, but I will let you continue.

>> I will use my time to address your point.

I believe that if there were

more transparent mechanisms to

plan and approve these projects, then everyone would

have an idea of how the process

is supposed to transpire, what

the role of the neighborhood is,

and what the process is and there would be consistency in that process.

**supervisor wiener:** that is not ceqa. That has to do with our planning process, distinct from ceqa.

>> I will examine those arguments from the conditional use.

My next point is that the lead agency did not address the

adverse social effects on people caused by the project.

As a factor in determining the

significance of the project' s political changes.

if the project would cause overcrowding at a public facility and the overcrowding causes an adverse affect on

people, the overcrowding would be regarded as a significant effect.

Hear, the planning department fails to consider whether an

adverse affect on the neighbors caused by overcrowding due to the physical changes to the building is a significant effect.

The department bases its

analysis on the assumption that

there will be 24 presidents.

However, there is no such limitation bound in the

application in the analysis under ceqa.

My next point is that the mandatory findings of significant cumulative impact

analysis, growth inducing impact

analysis, were flawed and glossed over.

in both the initial study and

the final mitigated neg dec

failed to take into account the impact in a special use district and increased density as well

as performance of open space requirements.

next,

I would like to address a

piece milling -- pieacemealing

nature of the process, in that through this pre approval long

process, you have a new way of

approving projects in the city.

You have grown so much money behind them that it is a done deal.

Really, what that is is a de facto amendment to the housing element. When you look at the housing element, uc

-- you see issues of transparency and neighborhood

involvement required. That is just not what happened here.

The point is that, what you really have is a de facto amendment to the housing element.

And that requires an eir.

Moreover, what the -- I will reserve that argument.

I have not had an opportunity

to -- I know that the department

came out with a response to some

of these issues we raised today.

I have not had an opportunity to review it thoroughly.

But I understand that the

argument is the city is not committed to the project.

and I'd just do not see how a \$4.4 million loan over a period of 55 years is anything less than a commitment to the project.

I would also point out that the

notice of exemption, while the department may believe there is

evidence that this is a case that does not require a-

declaration, I would like to

point out that that flies in the face that this is a the

mitigated neg dec.

It is the notice of exemption

that is referred to as the -- it

has no practical implication or

it does not shed any light on

the necessity of the mitigated neg dec.

Unless the supervisors have any

questions, I will move on to

highlight the arguments in the conditional use.

First, the commission improperly authorized the conditional use before the board of supervisors.

A conditional use

permit allows the use permitted by the zoning regulations, but because of possibilities that permitted use

could be incompatible with applicable zoning, a special permit is required.

The project is not permitted under current zoning legislation. Planning commission found the project is consistent with the planning code based on the

proposed ordinance which is not current laws.

The fact is more convenient with the city to do a conditional use at the same time as ceqa does not mean that they can ignore the procedure.

The conditional use, as it

stands, assumes it is already passed and that is not the case.

Nothing in the conditional use

authorization makes a contingent upon an sud.

Next, the city's special use district ordinance is improper

methods to propagate california

codes based on property requirements.

Density bonus requirements require the city to adopt an

ordinance that specifies how

compliance with the density bonus law will be implemented.

The city has not adopted an ordinance.

If it did, it would go to some of supervisor wiener's

concerns

about how the process should proceed to continue and

approved low-income housing.

Instead, the city passes and ad

hoc ordinance under special use

district ordinance to allow density bonuses.

Arguably, the city must pass an

sud to comply with the density bonus requirements of state law.

The city is

in an untenable situation.

If the city did pass an

ordinance, that would comprehensively deal with the density bonus requirements, you would have a consistent and transparent application of the regulation.

Hear, there it --

here, there is

no transparency, it is not consistent, and there is no way for the neighbors to understand and participate in a process

because this ad hoc basis is

opaque to the average resident.

Next, the commission did not address the inherent conflict

between permanent housing and housing for transitional-aged youths.

the project is designed to be

affordable housing for youth between 18-24 years of age.

There is a fundamental conflict

between housing design for youth up to a particular age and permanent housing with eviction control.

again, there is a disconnect

between the project as presented

to the community and to the potential reality.

The risk is that once the

project is fully occupied, current residents will not cycle

out to make room for additional residents, but after several

years, the project could be at full capacity with only residents over the age of 24.

The sud does not  
require tay  
housing, but the application, the legislation, the entire process is presented as that.  
This is an issue that should be  
addressed in order to create a  
consistent or part of a  
consistent, uniformed approach to this development of this type of housing.  
next, the commission could not  
have a rational decision on the application because the project  
sponsor is consistently unclear  
about the population that the project would serve. the project sponsor has represented that the project  
will support housing and for the conditioning of the foster care.  
this is described as any use  
between 18 and 24.  
The planning commission  
described the residence as  
transitional age students and a  
maximum of 50% of median income. The motion adopting conditional  
use only mentions foster use twice.  
-- youth twice.  
This inconsistency and the  
reality has disturbing  
implications not only for this project but as as a precedent for future projects.  
next, the size and density project.  
This is insufficient as so far  
as it will try to pack too many kids into two small units.  
This is the immensely important  
and to make work, the project sponsor needs a certain number of kids.  
To compare this to booker t., this is not even close.  
This is massively expensive.  
This is basically at the feet of the people that have to live there.  
I would like to point out that there are several aspects of the housing element.  
there is the objective of  
greater policy awareness out -- at greater policy awareness. How could this happen without  
any discussion?  
also to great certainty in the development in the entitlement  
process by creating primers. Implement the planning process  
improvements to produce project delays and provide clear information.  
this is a pot of the project for many reasons.  
when a project flies in the

face of the openness and  
transparency and the housing element.  
this is a much better framed  
statutory speak in set of regulations to carry out the  
goal of increasing housing in the city.  
That will conclude my presentation. If anyone has any questions.  
>> any questions for the appellant?  
Ok, thank you very much.  
Of like to ask if there are members of the public felt like  
to support either or both of the appeals.  
what I would like to suggest is  
that if we could line up.  
I know that there is an overflow  
room and individuals that was to speak on behalf of the  
appellants.  
We will bring folks in as we have capacity.  
>> I have a resident of the neighborhood.  
I am talking about the rule and  
holding of the california  
supreme court.  
the rule is not unclear.  
See "procedures are violated when there is a project  
completed prior to documents.  
This was approved before the  
completion of the environmental documents.  
This project was approved on  
july 19th, 2010, when the mayor  
approved the loan to enable the  
purchase of the property.  
If that was not enough, by the end of the year, the city has  
invested in its project that it  
approved \$4,416,508.  
Each dollar is a reason. The city' s approval of this  
project ignores the bright line  
rule of the supreme court  
case  
which the city must conform itself to.  
There is evidence this could have an effect on the environment.  
these are needed to exempt the project.  
This causes overcrowding.  
This might be a significant

affect.

the lead agency has been

prevented with many for -- their arguments.

>> thank you very much.

Thank you very much.

>> we have a lot of speakers and we have several hearings. Let' s hear from the next speaker.

>> our company built a mixed

use project.

We completed this in 2010.

We were informed of the housing proposal by a neighbor.

We were

required by law to visit a potential condominium of hours.

We have lost numerous sales

because the mayor is speaking with the project sponsors.

objections include it density, no drug free policy, insufficient staffing.

Findings must be made per paragraph two of the findings.

This

is for improvements with the potential development.

these findings cannot be made.

This suffers from overwhelming

neighborhood opposition .

i respectfully request that you

deny conditional use approval. Thank you.

>> our issue is not affordable

housing but any use that it serves.

This is not chp or with larkin street.

This is about the choice of this

particular building in a myriad of zoning exceptions.

the city could have avoided this

process .

I have a thought and with the outline and outreach plan.

Out reach in this case can mean identifying decision makers that will support and pass required

legislation that includes the planning department, the mayor, his staff. After they reach out to the

supporters among the community leaders, neighborhood

associations and can influence the back of the project. Only after the project is

virtually insured legislative

passage, political cover did they contact the neighbors.

They have traded an

uncooperative atmosphere with the stress of the people in the area.

the project sponsor has purchasing deadlines for the

building and they needed the zoning from the city.

There is \$4.4 million to spy out reach.

No decision makers lived near the property.

>> let me ask anyone watching

this if you wish to speak in

support of the appellants,

please come up to the hearing room and we will give you an

opportunity shortly.

>> I am from the marina community association.

the implication both of this and what they have during is to

imply that organizations to not support use housing. We do.

We think it is your responsibility to get the most

that you can. The other problem with this

project as you are deliberately done nine this to a good number

of people that need it because you'

re going with a gold-plated cadillac project.

it is your responsibility to guard the public money whether

it comes from a federal fund or

a state fund or a city fund.

Get the most for these people

that need it the housing, don't give them some gold-plated projects that is not really

accommodate 25 people.

this

is being billed for but \$280 million a square foot.

That is a ridiculous use of public money and it is your responsibility to make sure that

the money that the city has is used to get the maximum benefit

for these young people out here in need housing. I don'

t think the rest don't

care if that is near my house or someone else.

>>

I am here today to ask you to

give us answers regarding this project.

transparency is the most notable problem. The lack of any type of community outreach.

Secondly, we have now

determined that the units are subject to control.

There is no transparency for the

selection criteria of the 24

people that will get these

rooms, 24 rooms.

There is one directly across the

street which is controlled by lottery, by the mayor'

s office. I want to know why there is no  
selection.

Who will be doing this?

The final thing I would like to

say is that if they age in

place, they will not really be -- this is not serving the community that is supposed to serve.

>> thank you, supervisors.

all I'm asking is that you consider the impact on people  
like me .

Working against a done deal is difficult. Please, do your jobs.

>> next speaker.

>> thank you.

I have to

agree. we did not find out anything about this until it was a done deal.

We asked a lot of questions , we have not gotten any solid answers.

We have an answering -- asking the question.

We never really found out.

for the investors in this project?

I still have not found out what the public or private.

We probably know it is the mayor' s office.

Who is the person that is

getting the tax break?

hey, maybe I would unlike some tax breaks if I had been approached.

Let the big concern is the parking in the neighborhood.

there were 6500 bar and restaurant seats.

There are 1800 workers, 700

offices.

Only 1395 parking spaces.

I invite any of you to come to

the area about now and try to get a parking space.

we will get more people.

The study that they sent is

flawed because it shows that

people over 62 who live near supermarkets and cleaning and

things like that of have cars.

Guess what, no one over 62 will be living there.

>> thank you very much.

>> good afternoon.

I am a resident but not really a

neighbor of this project.

I speak to you more as a mother and taxpayer.

The big problem is that this is

a special use district for one building and it creates an incredible presence.

The project sponsor can increase

the number of rooms from 16 to 24.

This makes the project viable for the price tag.

a din of could see door room

would have cost about \$4 million.

-- a low occupancy dorm room could have cost about \$4 million.

This was sponsored by other supervisors outside the district and I understand they did not come and meet the neighborhood associations to meet -- find out with the objections are to it.

This is stacked against anyone really opposed at this point.

I don't think that that is much to do.

it calls into question the way we run our city.

You have someone from the middle

of a district who gets overruled in people and other areas.

The supervisors might not be responsible to the needs of that district, will not vote for you.

i know that some of to iran in the general election, you are outside the purview of district two.

-- I know that some of you were in the general election.

kids need more space. Thank you.

>> thank you, next speaker.

>> good afternoon, supervisors. I have a key items.

I had a property a very close. At the first is a letter from my

tenant, the new proposal , if approved, we would have to reconsider our tenancy.

we do not want to live near a housing project for at risk youth.

One comes from my own personal history.

After college, I worked for six months in asheville, north carolina.

For the most part, these were well developed and they have

little chance of changing their tendencies.

A young man brought a gun to the program. This was not the first time this had happened and it would not be the last.

Unfortunately, they are littered

with stories like this and sometimes they turn more serious.

The 24 at risk youth living next door, I don't want to take my

chances waiting for the next life threatening experience.

it was claimed that the minute

that the finding was announced, they began an extensive community are reached.

I live directly next door and in

early May of 2010, this is what I received.

And notice of intent to approve a housing development. This was already a done deal.

>> thank you.

>> I was not going to speak today.

I just came to see what was happening. We were originally told with 24

rooms downs when I went to the other

hearing, the public speeches, then the commissioners get to say what they say.

They called us elitist.

When has an elitist ever been at the bottom of a hill?

they are putting that in a newspaper and we're supposed to go for that? That is a done deal. We will see if it is. Thank you.

>> thank you.

>> hello, I and a property owner

in the area and I just have one statement.

October 22nd, 2010, the neighborhood advisory committee was formed.

I found this out through the neighborhood association.

There was a letter stating that they would support population

density and when the majority of participants refused to sign the

document, the chp suspended the vote after one meeting.

>> hello.

The chp purchased this and it is a special use district. When searching for a site for the project, there criteria was

a building was for 20 units.

This is scheduled for 16 minutes.

This is based on the city wide

definition of group housing which will allow them to have up to 50 prominent residents.

Based on the special use

district, the edward can have up to 98 people there at one time.

This project is far too small.

It seems like this is not suitable.

There is no outside space, there

is no parking, the rooms are very small. I don't know about the kitchen

and dining facilities and whether there is a group room where everyone can meet.

I think that the area is not a

good area and we quite disapprove of it.

>> next speaker.

>> good afternoon, supervisors.

My family owns the project adjacent.

This is not mandatory transition. The tenants will find a standard

lease with no time limits.

there is no actual program for the expectations and goals.

The chp cannot get control, they

went out.

I went hours listening and transcribing the entire hearing

and at the end of the day, I

witnessed a disregard for neighborhood questions and concerns from all except for one commissioner. It has been clear that the mind of these commissioners had been made up before the meeting started. That is denying us to process. this is setting a dangerous precedent. The commissioners opinions were misplaced, and accurate, and in some places offending. This not what we expect from a committee. Prior to the meeting, it had already been circulated in the hall that it would be fine if to one. commissioner antonini was the only one who addressed the size of the project. They express discontent regarding the special use request. They polished that the site has a lot of challenges, overcrowding. You cannot make it smoke-free, of all free, or probably drug free. Many questioned the extensive community outreach from the chp. Thank you.

>> thank you. Next speaker.

>> and all the hearings they have asked what alternative sites did you see. She did not look.

2230 lomb

ard, there are 29 rooms. They have been remodeled. They were on sale at the same time.

Larger rooms, larger bathrooms. There was an office, this was to let people in and out. all they needed to do was add an elevator and laundry facility and for all those parking prices, lots of parking places, they could have put a nice to me the room. They did not look at alternatives. Other people ask what sites to look at in the neighborhood and in the city.

I have a list of 16 right here that were available at the time. It must have been in a bad area. The edwardian at market street was for sale at the same time. you are not stopping the clock? I have not finished. Bayside in in the fisherman' s wharf is something to do. It is for 171,000 square feet and does give people a lot more amenities. There are dozens of them. They did not look. This is not in my backyard. Let' s do what' s best for the kids. Thank you.

**president chiu:** are there any other members of the public who wish to speak on behalf of the appellants? I want to make sure that anyone from the outside room has an opportunity to speak on behalf of the appellants.

Ok. This is it.

>> my name is jeff would. I am with the town hall association.

I am interested in maintaining the quality of our neighborhoods.

The city has proposed to change

the zoning but it is not taking full responsibility for the new conditional use.

by that, what I mean is, the city is waving open space requirements, they are waving

parking requirements, they are

waving a backyard requirements

and there is virtually no common space in the plan that was

proposed to the planning commission.

community housing

partners, to

their credit, they recognized

that these are problems with the proposed facility.

They have quite willingly offer some solutions.

they have offered to provide extra staffing.

They have offered to provide an

additional approximately 3000

square feet of common area community space for the residence.

they have also suggested a community oversight commission -- committee.

These suggestions need to be incorporated into the

conditional use if the zoning controls are removed.

Not just glibly avoided like the

planning commission did, this is something that supervisors need to look at.

It is probably true for every affordable housing unit in the city.

It needs some of this kind of input.

I think these conditions will protect not only the neighborhood, but it will improve the quality of life of residents. Thank you.

**president chiu:** thank you. Any other members of the public which to speak on behalf of the appellants? Ok. Seeing none, let's go to a presentation from our planning department.

>> I will do my best to be heard here. Good afternoon President Chiu and members of the board.

i am lisa gibson with the planning department.

In joining me today is my

colleague andrea contraras, who

is the final coordinator for the negative declaration that is the subject of today's appeal.

also with me is annemarie

rogers, who will address the conditional use application.

Tina tam will be available for questions about national resources. The planning department sent to

two appeal responses responding

to a total of two letters that were set by the appellate as a

result to the final neg dec appeal. If any of you need our latest memo, we have extra copies.

We also of copies for members of the public.

After careful consideration of  
the concerns raised in the  
testimony today, the planning department continues to find that the  
ffmnd was appropriately issued.

We will uphold the decision to  
issue and fmnd and returned  
the product to the department for an eir.

I would like to turn things over  
to andrea who will conclude the  
presentation and wrap things up. >> thank you.

I am with the planning department. The department found that the  
proposed conversion of a 29-room  
hotel to a 25-room group housing  
units includes a sud

would not result in a significant effect on the environment. The litigation measures have been agreed to buy the project  
sponsor and a mitigated negative declaration was appropriately prepared. The department's response to the primary concerns raised by the  
appellate can be grouped into the four main points.

Two related to the environmental review process and  
two related to the fmnd.

the department maintains that  
the preliminary maintained negative declaration was  
properly circulated.

And the city complied with the  
california environmental quality  
act, or ceqa, prior to any approval. In response to the substance-  
related concerns, the department asserts that the project density would not result in any significant impact.

And the fmnd,  
s analysis was inadequate.

Preparation of an eir is not warranted.  
in one process-related issue is the circulation of the pmnd.  
The department circulated it for  
a 20-day review period, consistent with the ceqa requirements.

The project is not a statewide,  
regional, or area significance  
as defined by ceqa, therefore it  
did not require a 30-day review period or circulation to the state agencies cited by the appellants.

The second process-related  
issue is compliance with ceqa prior to project approval, which the city did.  
initially, in July of 2010, the department determined that the  
product was exempt from ceqa and issued a certificate of determination of exemption.

The department found that the proposed change of use with

minor alterations, the building would not result in any significant environmental impact.

At that time, their policy was

not required pursuant to the

district ceqa guidelines that

were in a factory that the assumption determination was appropriately issue.

After the department issued the

exemption determination, members of the public continue to raise

concerns about the project' s impact.

Out of an abundance of caution, the department decided to prepare an initial study to determine whether and eir was required.

In doing so, we consider the

potential impact of the project

under the air district ceqa guidelines.

The department acted prudently and cautiously to identify a significant air quality impact,

even though the related air quality significant threshold was not technically applicable to the project.

The initial study identified in the mitigation measures to

reduce this impact to less than severe levels. The project sponsor agree to this measure and the department

issued a pmnd.

The project loan approval is not considered a project approval

under ceqa and therefore we approve the loans before the ceqa analysis. I would like to address the issues raised by the appellant. The offense of the density increase.

the proposed density increase

from 16 to 24 units was analyzed.

While the project would result in an increase in group housing

density, the department' s found its assets would be less than significant under ceqa.

With regard to land use, the

project would not specifically divide an established community, conflict with land use policies adopted for the purposes of

environmental litigation, it would not conflict with a

conservation plan, and it would

also not sit -- substantially impact the existing character of the project the city.

Thus, the project would not have a significant land use impact.

In addition, the project would not result in significant impacts to population and housing.

It would result in a total of 25

residents and employees for

.01% increase in the residential population in the marina neighborhood.

While this May be noticeable to immediate neighborhoods, the increase would not substantially change the existing area wide population and the resulting entity would not exceed levels

that are common in urban areas such as san francisco.

Further, the project would not displace people are housing or result in the need for additional housing.

Regarding cumulative and growth-

inducing impact, department staff would be planning efforts in the project the vicinity and found no past, present, or foreseeable sud' s.

As such, the appellants

assertion that it was set at

present -- set a precedent for other sud'

s is speculative.

Other reasonable developments should be considered in a ceqa analysis.

Contrary to the appellants assertions, the project is not part of a larger project and is not peacemealing.

this refers to the breaking down

of a development into multiple

developments in order to avoid review.

The project at 3155 scott street is an entirely separate and

independent of the 2009 housing element and and and other projects proposed. P the project is.

iecemealing of a greater project.

The fmnd

analysis of resources and hazardous materials -- all of these were analyzed in the fmnd.

The appellate has provided no substantial evidence to support their claims to the contrary.

finally, before I conclude, I would like to a knowledge the public testimony to that. It is clear from the speakers that there is a great deal of concern regarding the project.

I would like to thank the speakers for their testimony and everyone for coming out to speak to something that is very important to them.

i would especially know that no

new information has been raised that changes our conclusions

that and fmnd was appropriately issued. The department has found that,

with litigation, the proposed product would not have a significant impact on the

environment and fits the

criteria of a mitigated negative declaration pursuant to the ceqa guidelines. We believe the appellate has not provided any substantial evidence to review the conclusions of the department.

In some, the pmdn

was properly circulated, and ceqa review was

given before the project, the project would not result in significant impact cannot be

mitigated, the analysis of ceqa

topics was adequate, and preparation of eir to address these topics is not warranted.

Further environmental review would not change the facts that

this case would provide information for assessing the potential impact related to density or other ceqa topics.

Ultimately, it is the city' s responsibility under ceqa to determine the significance of an impact and based upon facts of this case.

That concludes our presentation. Thank you.

**Supervisor farrell:** ms.

contraras, before you hand it over, I have not had an issue with the environmental review at all.

But I just got your memo back.

I wanted to ask you, you labeled it as process.

The notion of, when a project is

approved has to do with the state case and what supervisor wiener was alluding to earlier.

Under your estimation, as people who run ceqa for us, when is a project approved?

>> thank you, supervisor farrell.

i would prefer to speak to the

particulars of this case, which  
are that the loan was approved  
in July of 2010 did not commit  
the city to a definitive course of action.

The particulars of the loan for  
this project required that even  
in the event of a default, the city would be able to recover its money.

The loan itself does not commit the city two particular points  
of action and supporting the project.

**Supervisor farrell:** I understand your point and I read that point. Is in the converse true then?

It goes both ways, is what I am saying.

One person -- you could view it and understand it and say, there are certain outlooks for the  
city, if it is not approved, there would be certain things.

On the flip side, could someone say the same?

that the city is committed if

the planning department approves it and the board of supervisors approves it, and so forth.

>> in my previous experience, a project approval would consist

of building permits, application

use signed, and it is common

knowledge among planning department stop that that cannot

occur until the process is complete.

>> thank you.

I am lisa gibson with the planning department. If I May address the question.

Prodded approval occurs at the

time when the lead agency, the

city, commits to the project to implementing it at a point where

it is an action which cannot be reversed.

Every project has specific circumstances depending on the

approval that are required.

in this case, the loan was not considered to be an

irretrievable, irreversible commitment of resources.

In this case, the project

approval is the approval of the conditional use authorization

and the sud ordinance to.

supervisor farrell: in the memo

I got this morning, it says that

ceqa is defined as approval by

the public agency which commits it to a definite course of action.

Not irreversible, but a definite course of action.

This applies to this project and every other one that we get through. I am just curious from a process point of view. Could someone take the position

that, if the board approves it and these other things that I mentioned could happen, then we are committed to it?

>> I think the operative word there is "it."

there is no commitment the city has made to approve the project.

this board has not acted to cut -- to approve the project.

That is the decision that awaits.

The first step that can be much received that consideration is the determination of the adequacy of the environmental document that is on appeal right now.

The loan that was -- that has

been approved by the city is very different from the nature

of the loan that was the subject

of the save tara case.

The terms of the loan are very different for the city.

The language of the loan documentation is very specific

to ensure that the city will get repaid.

In that case, there was a resumption and a store and a strong interest the city had in approving the project.

If it did not do so, it would not be repaid the money was

lent, and that case \$500,000.

The terms of that project were five years. In this case, these the civil war in which is that if the city

does not approve the project in, the loan must be repaid.

If it is not, there is a deed of

trust that the city can revoke to claim that property and use those proceeds to repay the loan.

**Supervisor farrell:** ok.

again, no substantive issue with the environmental review.

When I read the memo, and kurt supervisor wiener, I did have a question. The preference is not to address this.

But supervisor wiener asked this of the appellant, the attorney.

What is the bright line in terms of approval?

Talking about a dollar amount or otherwise.

This hearing today -- again,

this is for future processes. I want to be very clear about where we are.

>> thank you for the question. President Chiu, if I May, I would like to offer that our city attorney is available. We are getting into legal grounds that May be better handled by the city attorney.

>> good afternoon.

Approval by sequel is when the

city to Mr. Definitive course of action.

The most recent case that has

discussed this issue said that

as many people who would like to

be a bright line, and pull -- unfortunately it is not.

they have

submitted

irreversible meeting of

discourse, momentum, etc.

In the save tara case,

we let \$500,000 in the absence of repayment. the city has express' officially  
that it was support for the project, calling it a done deal.

The city began relocation.

In that case, the supreme court

said that you have gone too far, too early.

they actually said it is not a bright line rule.

It has to be interpreted on a case-by-case basis.

**Supervisor farrell:** I completely agree with supervisor wiener' s  
point earlier.

how are we going to fund these projects further if there is not some commitment on some level? Thank you for answering those questions.

**Supervisor wiener:** I want to thank you for following up on that. It is not just about these projects.

Whether it is treasure island or

something else, there are a

million mega-projects were saying the city could not do anything could be possibly interpreted as a vague commitment to wanting a project to be  
done before you are completely done with your ceqa

review would mean that no major

projects at all, ever, that require any sort of participation. I do not need the case law to require that.

I think the entire case was sort of an extreme kind of case.

supervisor chu: I just want to make sure that I understand. In terms of the pre-funding issue that was brought up by the appellant, the issue I am  
hearing is that because the city' s own programs require that

there is a loan repayment,

should there not be a future approvals going for environmental process? in that case, it is different

from the save tara case?

>> experiencing technical difficulties. That is correct.

**Supervisor chu:** another question for clarification. We have the environmental documents but also the special use appeal. One of the things I  
was

wondering about was, there is a

state law that allows for a

density bonus for affordable housing.

I wanted to understand how that works.

Do you get the bonus even

without approval of and sud?

Could you explain that?

>> good afternoon President Chiu and members of the board.

And there are certain

circumstances where the state housing bronislaw would

encourage a exceptions to the

existing law, including changes

to environmental requirements, parking requirements, adding

density which adds affordability which qualifies in this instance. We have not yet presented the

sud or conditional use appeal. I will present more when you are ready for that.

**Supervisor chu:** thank you.

**President Chiu:** any further questions?

>> I will continue with the presentation. This is our response to a conditional use appeal.

The conditional use appeal is perhaps the central question that is before the board today.

Is this project necessary and desirable for the community?

In this case, we are using an existing building for needed housing and services for transitional-aged youths.

it is hard to imagine a more

necessary or desirable project. While the appellate has raised numerous issues the we have addressed in our materials, I am going to focus on three categories for you today.

The process, the project, and the general plan. Let' s talk about the process first.

the appellate argues that proper procedures were not followed, but that is not the case.

The department has followed all procedures for noticing and public hearings for these environments.

The prosecutor has above the value of this project at every step in the process. At every opportunity, the appellate has filed an appeal.

today is not the first. The document was party appealed before the planning commission

and the planning commission upheld the ceqa document before

it adopted or even considered enabling legislation in the project. Due process has been served.

But what about the procedures for the enabling legislation,

and this case the special use district.

The appellate argues that the

commission cannot approve the hottest initial use of a prior to the board approving the sud.

Again, this is not the case.

For all normal procedures, the commission recommended approval of enabling legislation to this body.

And the commission approved the

cu and engine on your approval. Should do not approve the sud

today, there is no cu

opposition -- authorization.

This is outside the department' s jurisdiction.

If there are no questions, I

will end by remarks to set all

public noticing and procedures have been followed. Let' s consider the project itself.

Is the project prudent? Clearly, the answer is no. As entitled by the commission,

this project would allow 24 occupants to reside in a building based upon single occupancy units.

This is eight less occupancy could be permitted as of today under the existing codes without the sud.

The existing zoning would allow 16 units, each housing to

people, of 232 occupants overall with the existing zoning.

The sud allows a project that would be more in line with never requirements.

it allows more units to be required, but the project would have a lowered number of occupants per unit.

The approved projects as only

one occupant per unit for a total of 24.

If the appellate was to maximize development potential, they

could have saw and sud that

would have allowed 44 full-time ok' d is living in 22 rooms, to  
occupants for room -- two  
occupants per room.

Unfortunately, this is not what happened. The appellate submitted several conditions that would like to be applied to this project.

The question that aspect of this project, such as the size of the commitment, the type of  
support services and security. None of these features are mandated by the planning commission for the group housing uses they approve for.  
And yet, the products are as committed to provide these elements with their project. this is testament to the value  
of the project, not any land-use requirements. During the hearing, commissioners noted reading everything from the public. They consciously  
decided to

include or exclude the final condition before you for your re-examination. Many of the appellants additional request are already included in the  
motion before

you or beyond the commission' s

jurisdiction or told to be inappropriate for a land use body. Let me know if you of questions about any of their conditions?

And what about conformity with the general plan. The appellate states this project violates individual housing elements.

The commission determined that this project is inconsistent with the general plan and  
perhaps, the special housing element.

Instead of jumping in point-by-

point, it is important to understand that when determining the constituency with the general plan, it requires a view of the whole plan.

The general plan has a number of public policy goals which conflict with each other. The decision makers should review all the pertinent  
policies and decide whether the project is consistent with the general plan.

In addition to considering policies from the housing element, the commission has done that this product is consistent  
with the transportation, urban

design, commerce and industry, and other elements.

This project is a reasonable profit that can turn a hotel

into housing for those in need. You have heard from those who

have lived in the neighborhood and their opinion is important.

But under the criteria with the

project is considered, necessity and as our ability, these are applied on a citywide  
basis, not solely a tally of votes in the area.

section 303c1 of the planning code allows the board to base its findings on community as well as neighborhood considerations. This was based on  
conditions relevant to both the neighborhood and the broader city.

It is important -- the project in regard to immediate neighbors. Let'

s also review the project in relative to the benefits of the larger community and other public policy goals.

The bottom line is this location is a desirable location for the

project as it is in that -- as it is in an area that contains an abundance of housing at a variety of densities.

It is an appropriate

neighborhood for

it is in an area with a rich public transit system.

The former U.S. Would have

generated a higher traffic

impasse that it would for young people with limited income.

It will help offset the need for private vehicles.

The commission spoke specifically about how this project fits in with the residential character and how in neighborhoods such as this they can provide resources for young people. this is desirable and much needed affordable housing. The commission found that the physical attributes of the project and the housing itself to be compatible with the neighborhood and the surrounding structures. The reuse of an existing building that has been part of the community fabric. They have found that this is compatible.

Contrary to comments, the project is not yet approved.

At this point, the matter is in your hands before you.

We respectfully request that the board of supervisors upholds the planning commission' s decision. >> thank you.

Any questions for planning?

Please turn cell

phones off.

**Supervisor chu:** 8 follow up to the question I had earlier.

You talked about the density

bonus and how the project

sponsor could have requested a higher density level.

What that had required that they come to us for any approval to

get to that level or could that have been done without any action?

>> the state housing density

requires that cities or jurisdictions require an avenue

or ordinances for requiring exemptions including density increases.

It could have been required

either through a universal or it is adopted through this board

that it is applied in any case.

It has been a process in san francisco.

Additional community input is required for everything that comes forward. >> thank you.

**Supervisor farrell:** just to

clarify real quick, mine are

standing that the state has the density bonus of 35%.

The local jurisdictions have to

grant a law to do that.

San francisco has chosen not to do that yet. that'

s the process we have in

place to promulgate the 35%.

That is how we do it.

>> any other questions?

colleagues, why do we not move to the project sponsored?

You can divide up the time as

you see fit between the two different appeals?

>> good evening, board of supervisors.

I am the executive director and the project sponsor. Joining me for my presentation

today is parcel low not am the

executive director of ge services.

Through our statements today, we will address a myriad of issues brought up.

We went to address process.

back in 2009, community housing partnership applied for this issue from the housing ordinance.

Called for housing developers to come together and create house

for youth ages 18-24 that at

were risk for homelessness.

They asked that baby in a

transit rich neighborhood. Study showed that too much

affordable housing in areas that are saturated.

There are specific warning

points to have this in a low crime rate neighborhood and did not have saturation.

There are two brokers along side the search. It was for sale.

It met our criteria.

it would fit up to 24 units.

It would be delivered vacant.

It was in a transit-

rich neighborhood with a low crime rate.

The minute we were awarded funds

for a loan, we began community outreach.

We began by saying that we were

looking for offices in district two.

We began community out reached.

We have support letters from

residents in district two, from

city-wide organizations and a documentation of over 65

community outreaches we have had.

I would like to address how this will impact the neighborhood.

This is a rich and vibrant

neighbor to any community in seven francisco.

We will have 24-hour staffing on-site.

We will be a good community neighbor.

By coming together with the neighborhood groups, we could

come together with medication.

They have already agreed to

mitigations on neighbor' s requests.

We are providing 24/7 staffing.

We have a desk coverage 24 hours

a day, six days a week.

we created over 3000 square feet of community space.

We have limited overnight guests to over 10 per month.

We committed to forming a project advisory committee that  
would be present through the operation stage of the process.

upon execution of this

agreement, the neighborhood group walked away.

They decided to come here today and have their administrative appeal. They were unable to reach a partnership with us.

We feel that we made every

attempt possible under current

law and regulations to address the neighbor' s concerns.

The kids will have a lease.

They will sign it.

They will have to pay rent and be a good neighbor. We feel this has the right set  
of tools to be a successful project.

I will now hand Barcelona to come forward to talk to you about the  
design of the building.

>> good evening.

I would like to distribute some drawings to the board.

13 there.

there is also --

>> your time is continuing.

>> we have been doing affordable housing for over 20 years.

We have designed and constructed

over 1300 units in San Francisco.

It is the kind of work we like to do.

We believe that is why Market Street wants to work with us.

We will go to the next page that we cover.

>> could you get to the microphone?

>>

the basement consists of a community room with storage.

There is also a laundry

that

serves the residence.

We are installing an elevator that goes from the basement to the second floor.

the ground floor is very spacious.

There are a lot of the amenities that are available to residents.

These services are about 300 square feet.

The program illustrated 50 square feet.

There was some confusion on the appellate  
nt'

s calculation for the kitchen.

These are all very expansive spaces for the residents to use.

The dining accommodate 17 seats,  
which is 71% of the population of the building.

there is also a lounge, a  
property manager, and a resident  
manager accessible on the ground floor.

When you go to the next plan on  
the second floor, this is where the elevator services are.

when you calculate the total  
number of the accessible units,  
we have five including the resident manager.

That total was 20% of the units.

We are going way beyond  
that in terms of flexibility.

we do substantial work on the first floor.

Those are all accessible completely.

About half of the building is totally accessible.

The third floor I will not go into too much detail.  
it does not have any accessible units on that floor.

The tabulation sheet I gave you  
print -- breaks down in detail all of the units.

They vary in detail from 100  
detail from to 209 square feet.

in terms of seismic analysis ,  
are seismic engineer is making  
are building more seismic resisting.

i think that is about it.

If you have any questions, I could answer.

>> colleagues.

Next speaker.

>> good evening, supervisors.

i want to speak briefly about  
the need for housing and about the expectations and the work that the young people will be doing while they are housed.

The note that was released came  
out of the san francisco mayoral  
task force.

That was comprised of representatives and young people.

That is one of the most primary needs for young people.

It is estimated that there are 3700 young people in san francisco that are at risk for homelessness each year.

we are able to house about 400

of those youths currently.

That is why this particular project was selected for the neighborhood.

The young people are expected to

be engaged in education and employment.

The development of life skills and self-sufficiency.

We operate over 200 units of housing in san francisco.

The young people that stay in

our program the various about

two to three years.

Youth move in and moved out.

Most of us do not live where we

move -- where we lived when we were 22 years old.

The common areas and bedrooms are designed to provide a nice

comfortable place to live at is not so comfortable you are bored to want to stay there the rest of your life.

Young people are working on the skills that they need to exit. They will have a job.

They will make doctor' s appointments, in developing peer relationships.

75% of our young people go on to independence. Are there any questions that I can answer?

>> any questions, colleagues?

Madame Clerk, is there still time on the roster?

>> there is eight minutes and 57 seconds left.

>> I would ask if there are any presentations left.

If not, we can proceed to public comment.

>> I want to thank the board for hearing this.

I would like them to consider

the need for this housing and dispersing affordable housing to all districts.

>> thank you.

Why do we not move to public

comment in support of the project?

If folks could line up on the left side of the room.

If there are folks in our

overflow room, we will take

folks two minutes at a time. We are going to have to take

this line outside of this room.

Why do we not hear from our first speaker, please?

>> thank you, supervisors.

I am a passport member of the association.

I am a current member of the youth services.

I

am uniquely familiar with the neighborhood and market street.

it has 13 programs and sites throughout the city.

I support the program in our neighborhood.

I do wish that the project would cost less than it cost.

If we cannot increase the

density of the project to 24

units, that will only make the project cost more.

I hope that you approve this

project.

Until the project is completed,

there will be youths not receiving these services.

The youth are in desperate need

of the housing and the services that market street can provide.

>> thank you.

>> good evening, supervisors.

i lived and worked in san francisco.

I testified in support of residential programs in support

of disabled people since 1977.

That was for a house designed for 16 years.

despite its liberal reputation, the neighborhood opposition to the program was vicious.

The board of supervisors supported the program and allowed it to open.

That christmas, the angriest

neighbors brought cookies to the house. That program is still open.

During the 1990' s, the same agency tried to open a residential treatment program in

pacific heights for individuals that had banned in locked facilities.

It has many

pro bono lawyers.

This board approved the program. a few neighbors know that the handsome building houses a program for mentally ill people,

nor should they.

The san francisco board of

supervisors has voted for

programs despite neighborhood opposition. they work for the individuals who live there.

Unlike other bay area cities, over several decades, you have to approve projects like the one before you today.

Projects operated by competent people.

You cannot ask for better sponsors. There is no reason not to

approve this project or to support it.

You have been supporting excellent programs for over 40 years.

Why change now?

>> next speaker.

>> good afternoon. I am a youth.

i am on the board of the youth advisory. I am here because this is

something that directly affects me.

I have been here for three months.

I came here from oregon that with \$20 in my pocket.

within 30 days, they help me get

into a housing option. They transferred me into a shelter.

I was able to finish gathering my birth certificate, my

license, getting into college, and finding a house outside of the shelter.

I am on two waiting lists for housing options.

i heard people before me say

that my peers, the concerns would be that we would be

rambunctious or we would take up space.

Those are valid concerns.

Every week I work with six dedicated homeless youths including myself to try to change those assumptions.

Every day I see dedicated youth

that are tried to get off the streets and are trying to do better with their lives.

We chose this location just like the neighbors did.

this is a safe place where we can get on our feet.

I felt that their concerns are valid.

We are doing the best that we can.

We as youth are doing the best

we can to be productive citizens.

We hope you will do this for us so that we will have more places to live.

>> thank you. Next speaker.

>> I am a nearby resident of the project. I've lived there for over 20 years.

i think it is a great neighborhood for children.

That is why I am excited about welcoming these kids into the neighborhood.

I think it is a great place for these kids. There is an incredible need for this housing.

We have been incredible opportunity to provide more of

it where there will be safe and they can get on with their lives.

I also happen to be a former

board member of larkin street

and a former board member at the research organization.

I am also a developer.

i see all this opposition as a completely normal part of this process.

It makes these projects better in the long run.

I think that the organizations have made modifications to the programs that will make it

better for the community in the long run.

I think that the process has worked great.

i think now is the time to be done with it.

I think the opposition was grasping a little bit.

Cancelling the project to say

that this violates any aspect of

ceqa is a little bit nonsensical.

i am hoping that you will approve this project.

We can get these kids off of the streets and into our neighborhood. Thanks.

>> President, supervisors, my

name is joel lipsky.

i am a member of the board.

I am a former director at the mayor's office of housing. I was there until January.

I helped to draft it

when the project was rewarded funds.

i need to emphasize that I'm not

speaking on behalf of this. I am speaking as a citizen of the city.

All I want to say is I'

m extremely relieved to hear that the real reason that we have

this appeal has to deal with process and transparency.

Those are things that the department can work on to

prevent this kind of brouhaha in the future.

They are in support of youth

housing. that is not about keeping the

kids out of the neighborhood,

even banks are low in coming and coming from these different neighborhoods.

Even if they had not gotten used to the idea of living with rules.

They are valid concerns about where the kids are going to fit into the neighborhood.

they May not, at if bay field --

if they feel unwelcome.

I want to appeal to the appellants.

.

they are going to feel that they are not welcome because they are expected to misbehave.

They are going to hear a lot of stuff. Some of it May not be true.

>> thank you very much. >> thank you very much.

>> good afternoon, supervisors.

I am here to represent the

harvey milk democratic club.

The club is in full support of

the collaborative effort of the community housing and larkin

street youth services.

If we want to prevent our youth  
from slipping through the cracks, we must provide them the opportunity to succeed.  
shelters are full of domestic  
-- youth that are dumped on the street after the foster system runs out.  
Those who have run away from  
trauma from coming out as queerer in hostile families.  
it is deeply saddening to hear  
it neighbors labeling potential  
tenants as criminals orthotics.  
75% of the listeners admit that they have more concerns about  
the tenant population than  
design, planning, or financial costs.  
this is blatant discrimination and counterproductive to g  
theoal of establishing a safe communities city-wide.  
They are not battling violence or criminal records.  
The units are combined for 24  
stable prescreened young adults  
ages 18-24 who are in desperate need of affordable housing.  
We believed larkin street and the community housing partnership have a stellar partnership as good neighbors to route the city.  
We want to give them an  
opportunity to thrive in a safe  
community with access to recreational resources.  
We urge you to support the housing development.  
>> thank you. Next speaker.  
>> thank you, Mr. President.  
My name is rev. Arnold townsend.  
san francisco naacp and the opportunity council.  
Unlike one of the other  
speakers, I would like to be as optimistic as he is.  
I have been around this process for a long time.  
this has everything to do with people who do not want those kind of people in their neighborhood.  
Having bad not one of those type  
of people all of my life, I am very familiar with it. You cannot pull the ool  
wool over my eyes.  
children who are not on parole or probation, they have not done anything wrong.  
Wrong has been done to them.  
Most of them from the day of their birth.  
We are losing our sense of compassion.  
We are losing the moral high  
ground when it comes to meeting

the needs of the most challenge people in our society.

These youths who are again ing out

of foster care.

They might get a better

response bank they were with the tea party.

it is painful and disgusting when they say that there should

be an oversight committees who determines what the children do in their house.

Who wants an oversight committee for the residents that are complaining about this to

determine what they do in their house?

you have got to be really thick skinned and mean-spirited.

I bet all of these people have

sat and looked and said that somebody needs to do something.

I bet they never realized that

they would have the opportunity to do something. >> thank you. Next speaker.

>> thank you for your time, supervisors.

I am the co-founder and executive director of at the crossroads.

It is for home y>> I was a member of the

transitional youth task force and I am here to offer the strongest possible support.

During the past 14 years, the

need for housing for 18-24 year- old has grown dramatically.

It is essential to the health of all san francisco.

They can become not just

productive members of society, but leaders of the city.

this is why city departments, nonprofit organizations, young

adults, and concerned citizens

have identified housing as the number one priority for this age group.

It is not their fault, it is not an indicator of some problem that they have. They' re just young people that need a safe home.

some of these kids are

fantastic, some are challenging, some are motivated, and some are struggling to find their path.

There are without homes because they have broken families or

they grew up with no safety net. Because they live in an expensive city where many people find it challenging to pay for their housing.

they are not bad kids.

They adapt to their surroundings and they are influenced by those around them.

If they are in a neighborhood

with violence or drug use, they

have the potential to be turned to those avenues.

If adults encourage them to be their best self, that is to they will become.

They want safety, stability, and a positive community.

I have seen the potential time and time again.

We can leave these kids on the streets and say that the only neighborhoods they belong in are the most dangerous and

vulnerable areas, or we can make the statement that all young people deserve the opportunity to build of standing lives.

I am also submitting -- [Inaudible]

**President Chiu:** you can give it to the clerk. Thank you.

>> I would like to address the residents.

It seems to me like -- wow. Ok.

it seems to me like you guys are fine with having a place to live as long as it is not the community.

I wanted to address the problems that you guys and brought up.

None of you are footing the bill. When is the problem?

It is a good thing you guys are concerned about where your tax dollars are going.

But at the same time, the only people that are actually going

to be putting forth money would

be the use -- youth. Ok.

I think that the main reason

that youth are at risk is because they don't have a safe or stable place to live.

And talking about the committee's or a lack of misinformation from both parties.

On the other hand, do I really need your permission to live somewhere?

That is all I really have to say, thank you.

>> good evening, members of the board.

I am a senior program manager with the corporation for support of housing.

It is a nonprofit organization that helps communities across the country create permanent

housing with services to prevent homelessness.

The support of housing model is a prudent approach for homelessness and reducing the

costly and unproductive emergency services.

We believe strongly in the research is promising that transition age youth are able to

succeed when provided safe and affordable housing and access to relevant and responsive services.

We are an enthusiastic

supporter for the youth services

effort to create 24 apartments

for youth aged 18-24 at risk of

homelessness including the aging out of foster care.

They both have award winning reputations for their work

whether is housing development, management, or support of services.

I trust they will bring this

work ethic and professionalism to the project.

Half at all, it represents a small but meaningful

contribution to the transitional aged youth housing plan.

Each one represents a significant investment in preventing homelessness right

now and preventing the emergence of a new generation of homeless adults and families.

please support the efforts.

The '90s appeals for the conditional use permit. Thank you.

>> good evening, President Chiu

and members of the board.

I am here in strong support of

the project which takes a 29-

unit hotel down to 24 units.

The neighborhood outreach that we have conducted has been amazing.

there is a website for community

meetings, house parties, fires, the males, and door hangers.

And it matches those of your political campaigns.

Sometimes you can't completely

overcome through claims and fear that the opposition is putting out there.

In this case, it has been the comparison to the bridge hotel.

It is a private market rate building where the owners feel the best way to maximize their profits is to run eighth in the current way it is being run.

All of you on the board no for a fact the community housing

partnerships that professionally own and operate at were the second, it will not be another bridge hotel.

If approved, I am confident that my neighbors will realize that as well.

Today, I have to wonder how many of my neighbors have signed

petitions against that were the second because they are against the bridge hotel.

And not because they are against quality projects.

They truly lost to those buyers because of the were the second rather than the economy.

It is due to the untrue rumors of edward the second being another bridge hotel that nobody would want to live next to.

young adults easing out of foster care that have done no wrong to anyone should not be held responsible for these

rumors and unsubstantiated fears. I urge you to support this product that will have no impact

on my neighborhood that is already a vibrant part of san francisco.

>> my name is barbara, I have

been a resident since January of

1985, and I am here to speak in

support of the project.

i have previously written to the board about my support and I am here today to reiterate my

position and feelings that I expressed in those letters.

We have an obligation to uphold

our promise to the youth of california that find themselves in the foster care system.

we tell them if you of pulled your end of the bargain, if you stay in school and are gainfully

employed and immerse yourself in job training, we will continue to support you.

We should be applauding the determination of these young

adults to become self- sufficient.

i urge all parents to remember the assistance they gave their

children after high school graduation whether they' re going

to a two-year or four-year college.

I think we should all remember the assistance we receive from our parents during that

transitional time in two first jobs or careers.

but what happens in california is that at the age of 18, children in the foster care system are left on their own.

I am thankful that they are here to help with the transition through college and the first jobs.

I think we should celebrate the determination and hard work, welcome them to our neighborhood.

Please remember the success that they have had with their projects.

They are developed for young adults 18-24.

I am proud to stand with these agencies and young adults that will live in these 24 units.

i am proud to help them fight to have a, and i'll forward to welcoming them to the marina.

>> my name is bill campbell.

I have lived in different locations within seven blocks of edward the second for 35 years.

I was looking through an alumni magazine when I saw one of those

articles on faculty research projects.

This one began with this sentence.

One third half of the girl

living in high crime areas are victims of sexual violence.

young women that live in poor neighborhoods face violence is

way above what women in other neighborhoods face.

We need a citywide solution and all neighborhoods need to step up. I know the track record.

one of the reasons why it is so successful is that it has high

expectations and it provides a world-class mentoring and support.

Years ago,

there was a mansion and in pacific heights.

I never heard of a single incident to the entire time it was there.

I think it will be the same way here. I have listened to the opponent's comments.

I have heard one person say three times that he was against

this project because it is a gold-plated project. I have heard other people say that the rooms are too small and there is not enough common

areas, there is not enough outside space. It is not nice enough.

The other person says the young people won't stay there too long.

I think it is pretty clear that

no project is going to make all

the implements happy, no project is perfect.

But this project is an exceptionally good one. Let's not wait for a perfect project, because I don't think we will see one.

We need to offer a safe place to live now to transition to community life.

>> I am 21

years old of age and

I have been working with them since entering the foster system in 2004.

there are so currently working with them.

On behalf of all transition age

youth, as a 21-year-old led the divide woman, I have had to face

many -- I have been provided with a wide variety of

supportive services and forms of

membership, case management, and it has allowed me to tackle some

of these issues regarding housing.

i was able to intern who gained

experience as well as plan by next steps around employment.

And I was able to get an educational plan eventually

leading to a transfer to san francisco state.

So I can continue to advocate for youth in this position.

My story is what you will hear over and over again when it comes to the youth services.

I believe that is because they are good at what they do.

they want to continue to help people.

My story still came at a very large price of me dealing with a

lot of hard ships and overcoming a lot of struggles.

But due to their great track record of meeting people where they are at and meeting people

half way, I think they can help the youth and I think they can

assist the residents and hope some of their fears.

I hope he will support this project, thank you.

>> hon. Board members, I live and work in san francisco and I

have had the honor of being a

board member from the late-1980s until the late 1990' s.

I watched it grow.

When I first started, the budget was \$300,000.

now I understand that due to success and reputation as over \$12 million.

That \$12 million supports a full continuum of services that

I am sure you have heard about.

There are very successful, they are known nationally and internationally.

i am reminded, and I know you have heard about the

populations that the market street youth services, who their clients are.

I am reminded that D.C. Youth that are in foster home at age

18, as you heard President Of

the marina remind us, at age 18, they are turned away.

And think about us as parents,

us as children, how support of the work of our children once they graduate from high school

or for those of you younger than I am, how your parents supported

you when you graduated from high school.

these foster kids heart and underserved population.

When I think about this, I am

reminded by something -- a

jesuit philosopher reminded me that the society is judged by

how it treats in the least of its members.

Please support this project.

>> supervisors, I feel underdressed.

I am here talking on behalf of youth services.

I am currently staying at the youth shelter.

I recently had a chance to visit the marina district for the first time.

It was very beautiful and very clean.

I did not understand why there

was some much debate about the shelter and the first place.

Aside from money and building regulations, I understand there is a certain level of fear that

comes with homeless activity in such a beautiful district like the marina.

No one wants to see the marina look like the tenderloin.

I want to reassure anyone with of the concern that you' ve shelters are nothing like other homeless shelters.

All the youth that I have

encountered have all been very motivated individuals whose

ultimate goal was to have jobs and go to school.

It is my belief that living in an area like the marina would only benefit the homeless youth

to continue their pursuit.

San francisco is a very iconic city.

I believe that what happens here influences what happens elsewhere in this country.

I believe that we can really show the rest of the world that

caring about youth who don' t

have a lot of choices in life generally encourage others to do the same.

No one tells the youth that they are going to become homeless until it is a done deal.

No one told me my mom was going

to pass away after I graduated high school.

but because of programs , I am out setting up to go to college next year.

It is a dream I could not see happen otherwise.

I believe rules have been banned for worse reasons.

>> I have a resident avenue independence.

The marina district doesn' t

release support of -- support a lot of what is going on.

I am starting to see them take a tour.

And as a resident, I work for the department and the environment.

I clean up a lot of the murals down there.

And we were down their cleaning up some graffiti.

they have given me an opportunity with the department of the environment to start

pilot programs to implement energy efficiency and a zero

waste program along with orchard and garden projects.

Hopefully, they can implement the same projects.

without a lot of opportunities,

I am looking forward to going to uc-berkeley for architecture.

I give all my thanks.

>> I am a resident of district

Conditional use permit are designed to provide flexibility

in the planning code to achieve public code.

out -- and always be improved.

This is a well conceived

project, please support the hotel project for transition aged youth.

>> thank you for the opportunity to speak briefly with you tonight about the edward the second project.

I am a resident of the richmond district. I am here in my professional

capacity tonight, I am the

program director of the court- appointed advocates for children.

What I really want to talk about tonight, there are a lot of practical issues that need to be

considered, however she eighth heard that it is complex.

I am trying to be another reminder of the big picture.

What I consider not to be just

an important issue, but a critical issue.

As someone that has worked the

last 12 years, watch many youth leave foster care without much more than a simple plan for

their lives, sometimes those plans fall apart.

I really see this as one step towards addressing the crisis.

And I think based on the experience we have had, we

really need to see many more projects like this, and maybe we will make a dent in what I call the crisis of housing.

The youth are amazing.

They are called at risk a lot.

I don' t know anybody who as a teenager that doesn' t have risk.

I know I had risen and I have

many privileges and support in my life.

I want you to consider the big

picture of getting these youth

into a safe and affordable -- and have a leg up in their lives.

>> I am coming to speak on

behalf of the san francisco democratic county central committee.

This came out before us and it passed.

we want to see this bill.

I was a teacher for 40 years.

They are at risk of succeeding.

They are at risk of becoming wonderful citizens if they can get the hell.

without help, they can fall through the cracks.

if they can get health, they can make it in this world.

My son was one of those.

My son was so at risk because he

was learning disabled, but very bright.

my son became very abusive because he was so frightened at school.

If it had not been for help

outside of the home that he got , he would not have made it through school.

He would not be a teacher of severely handicapped students.

each of these people has had a hard life.

This will help them.

This is the kind of housing that is important for everybody here.

This will make these children ,

good citizens, good parents , good jobholders.

It is important that you vote on this matter.

>> I am very glad for the

opportunity to be off the

streets and to get my life back in a stable path going forward.

I think that the adults in this room have forgotten that at one

time, we passed through the 18- 25 year category.

There May be somebody who

reached 17 in a skiff to 26, but that was a miracle.

Everybody probably said there were going to run away from home because they don' t like the way they were being treated.

This is an opportunity for the board to go forward with a small

space in the big city of san francisco and help the youth.

Each of us needs to remember, if

not for the help that we have, how many would make it to where we are today?

>> I am a transitional age youth.

It is appalling that people are opposing this project, no matter

how the concerns are framed, it doesn' t make sense to a young

person like myself that would benefit greatly from this housing project.

I don' t understand how people

can be opposed to helping to create safe and affordable

housing for the city' s most marginalized youth. Rather than respond to the

issues, I would like to remind

you all that the initial goal

was to create 400 units for the transitional age youth by 2012.

That goal has already been delayed.

and this is a very urgent matter

and ask that you not further delay this project.

Affordable housing is one of the most critical needs.

Please support the project. Thank you.

>> good evening, supervisors.

I am here to

speak in support of the edward the second project.

Just for a second, imagine a child that has been sexually abused by her father and is forced to enter the foster care system.

This is a friend of mine that is  
now 19 years old and just trying  
to get her life together, trying to recover from trauma.

This is not the only person.

There are thousands of young  
people in similar, worse, or different type of situations that are trying to live a healthy life.

Imagine a senior citizen, a refugee from el salvador that  
makes a living out of her house.

She is barely making ends meet,  
she consistently taking in youth and young families that are  
struggling with housing from her local church.

That is my grandmother.

Not only does she take in those  
folks, she supported myself, my sister, and my mother.  
if this elderly woman who made  
ends meet by clipping coupons, only shopping when there was a  
sale, could support some many people that I used to see  
growing up, why can't the city and county of san francisco  
support this project and provide housing for transitional aid used?

I urge you to make the right decision and the support and  
move forward the edward the second.

The goal was to have 400 by 2012, we know that is not going to happen. But let's not delay any further and given the right direction.

>> I am the executive director of the treasure island public development.

I am here in favor of the housing project being proposed by community housing partnerships had to speak against the appeals of this project.

Having worked for over a decade and being in contact with so

many people have rebuilt their

lives and credited the positive environment of treasure island

for helping them stabilize,

grow, and prosper, I feel strongly that we must provide  
these opportunities in different neighborhoods whenever we can.

It represents the best of what

the city can do to address those needs and opportunities. I'

ve also worked with community health at a partnership for 15 years.

They take their mission seriously, there are

professional, compassionate, that they care greatly about their tents.

San francisco and the neighborhood could not ask for a better partner.

I hope the appeals are soundly rejected so that this project

May move forward in the san francisco transitional age you can find their place to stabilize growth and prosper.

>> I am a marina native and homeowner.

my neighbors, my extended family, many of my friends.

There is concern -- I can promise you that they will have

much more space than students

have in the dorms.

these are young people that are

asking for a hand up and not a hand out.

Please vote to pass the project, thank you.

>> members of the board of supervisors, my name is richard spring water.

Why May district to resident and a supporter of that were the second.

My day job involves real estate.

in support of housing buildings

, they serve 238 formerly

homeless adults and 48 formerly homeless families.

in addition, I am a member of the san francisco local homeless

coordinating board where I have served for the past 10 years.

The board is charged with

overseeing in the continuum of care.

The proposed project by community housing partnership,

if approved, will play a vital role in the continuum of care.

the solution to homelessness is a home.

Support was developed 20 years ago.

Research has shown the support of housing pays for itself through savings in other public resources.

They are otherwise consumed by the homeless.

Supportive housing turns lives around.

We live in a vibrant city.

We live near busy streets, and noisy schools, popular bars and restaurants whose regular is

frequently celebrated at inconvenient hours.

i wish that I could give comfort to those neighbors that have spoken in opposition to the

motion that there is nothing to worry about.

They have a national reputation has service providers and managers, and I believe it will be a positive addition to the neighborhood.

The one thing I know for sure is that the head with the second will save lives.

Those lives will be our sons and daughters. Thank you.

>> I work for allies united, formerly friends of the children for eight years.

And I work with foster youth and at risk youth.

I understand the concerns and

the fear, I support this project.

The biggest concern is safety, but I have seen the youth

services performed very well, internationally known to be a successful program.

Selecting people that want to be stable adults.

They need help and deserve a real chance.

I feel san francisco should allow this. We have a moral obligation to

protect our most vulnerable

population, our youth.

We have a social responsibility to provide housing opportunities for those trying to uplift themselves.

San Francisco has been about community and that is why I have moved here.

I hope that folks voting can see

this is a beacon of light rather

than something that is not worse for us in the community.

>> my name is Lisa, I am reading

a letter on behalf of the neighborhood association.

On behalf of the North Panhandle Neighborhood Association, I would like to strongly encourage you to

approve the plans for the Edward the Second project.

There is a community housing project within our neighborhood.

It is a wonderful project that is filled with civic minded staff and residents.

We have had nothing but positive experiences.

Several residences -- several residents attend committee meetings.

We had our share of detractors on this project.

They are worried, which I think is the main concern, that such a

place will somehow degrade the quality of life for neighbors.

Our experience to date has been the complete opposite.

Our neighborhood and neighbors'

lives are enhanced by a well-run

facility that adds an element of

diversity of life experience and

caring that solidifies our mutual commitment to building a better community.

The community housing partnership is an excellent neighbor.

They are sensitive and responsive to the concerns of

neighbors and provide a much-

needed service to those at the helm.

>> on behalf of San Francisco Housing Action Coalition.

Month ago, we reviewed this project and support it wholeheartedly.

But we think that the neighborhood would be improved

by putting this project, and San

Francisco as a logical would be improved if these types of projects were dispersed all over the city.

We want to express our deep

frustration that CEQA is a tool

to try to hamstring projects, to try to stop them.

It proves how broken it is as a tool for addressing the environmental challenges that the city faces.

The very rare accident of the

site of great developer and a great service provider occurring at the same place at time.

It is hard to police projects.

I want to say that as far as

this appeal goes, we all know that this discussion is about many things.

The impact on the environment is not one of them.

i have to say that the appeal of a project like this is reprehensible and i hope that you would not support it.

>> I am the interim housing director at the vernal heights neighborhood center.

If is a sister agency, we both

have a true community-based approach for her affordable housing.

They said the bar very high for the quality of its development.

we look at it for the long run,

for 55 years, the quality of

construction and the operations to keep the housing stable.

Among the colleagues and

neighbors, as a leader in

developing a very sophisticated

and successful model of property management.

The project is desperately needed to address the needs of transitional youth.

The city is responsible for the funds.

They will be incorporating the

units into a project that we are in development for right now.

It is important that all of the

neighborhoods understand that we are really one city, one community.

And we have a responsibility to take care of each other.

I sought a t-shirt as I was sitting in the overflow room that said that the solution to

homelessness is affordable housing. I would say high-quality

affordable housing less affordable services is a solution to homelessness and this project does just that. I urge your support.

>> I am speaking on behalf -- everyone knows that we are not here because of anybody

spreading passion for ceqa. [Laughter]

A very small group of people think that and the property of

their value of their neighborhood will decline.

The idea that one person can know anything about another

person based on their gender, their sexual orientation, is something we call prejudice.

The notion that it is a

validation to determine who

lives in what neighborhood is called segregation.

And here we are.

If you bring all of our thinking

into the twenty first century, this fades away.

Do you support use housing or to support you homelessness.

I think you know everything that you -- that I have said right now and they will vote the right way.

>> how' re you doing, supervisors?

i come from foster care, and I did not have anywhere to go. It was real hard.

What they are trying to do with

this, they want to support

children coming from a foster

home with housing, this is very vital.

It is real powerful and it would really help a lot in a positive way.

A hope you take into consideration here. Thank you.

>> I live one block from the

edward project

-- also, I am familiar with the community

housing building >> before

coming to this particular

organization, I have worked with transitional youth.

While working with the specific

population of 12-24, I realize the importance of them having something that they can call their own as well as having

certain issues addressed whether

it is teen pregnancy, truancy,

gang violence, things like that in order to overcome their odds.

It is important to assist them and reach out to them.

The community housing partnership, their track record speak for themselves.

In regard to our reaching and working with people that have

been excluded in this society, people are afraid of what they don't know.

It will introduce neighbors to a new set of communities.

>> I am not only a resident, I am an employee.

They have done a lot for me, to give me employed.

I hope for the user, we get some

kind of help that they really need, because it is going to be

rough on all-out of people. if they don't get housing, it will be rough on everybody else.

>> I am President Of the golden gate valley neighborhood association.

we heard about the golden gate valley library.

And edward the second is one

block west of the western boundaries. We have supported this product from the very beginning. We think it is good for the neighborhood. We think it is important for us to shoulder some of the burden for this youth population.

We think the community housing partnerships and the youth

services our quality organizations. I've been impressed by the amount of negotiation that they have undertaken with our

neighbors that are nervous

about this project and I am not a entirely sure exactly why.

I think the mitigation of a health and should help ease

those concerns, like if there is an advisory committee or what ever it is of neighbors to

oversee the implementation of this project.

I just want you to know that there are many of us out there

that think this is good, and we welcome it.

we are just not frightened by the unknown.

>> over 60% of its population,

what we see when the population

actually attends city colleges,

they become couch surfers.

They go from house to house with no permanent or stable residents. A lot of them end up dropping

out because there is no support

services for this population.

In the city of st. Francis where we talk about these values of

supporting and protecting the people that don't have a lot of protection, this is one of the projects that we should be

supporting in san francisco.

I want to point out that this is

a drop in the bucket of the real housing needs for this population.

I want to make sure that we can

be as supportive in san

francisco for the population to

continue to support projects that really bring this

population out of poverty and out of their cycle of abuse.

I want to wholeheartedly support this project and I hope that the board of supervisors can, too.

>> I am with the council on community housing associations, we are in strong support of the project.

you are talking about to institutions, they have had an incredible track record.

These are organizations that we look to as a coalition, as models of how to get it done and how to do it well.

And that is a core value of those organizations.

i want to put that into the larger context of the affordable

housing community, a coalition of 17 member organizations that

build housing, provide services and do advocacy.

It is important that community-

based organizations are here to stay. They don't build and run.

it is different than thinking

about a one-time project that you have to live with.

These folks are going to build its affordability and quality because this is an asset they have to manage.

They also build for their own

property management viability

because they have to own it, run it, and operate it.

In terms of housing in the san

francisco, some of the best managed housing in the best management services is from affordable housing developers.

I want to emphasize that this

will be good quality, very well managed.

>> I know it has been a long evening for you wallenda been hearing a lot about this particular project from folks.

i want you to take a minute and

clear your mind, close your

eyes, and think about what image comes to your mind when I say a couple of phrases.

Foster care youths. Homeless youth.

Are those images and scary?

my comments are mostly directed from those fighting against this project.

These images to scare them. They scare them ala.

Even though they May have moved into the neighborhood that has

the widest people in the entire city, that particular neighborhood doesn't have a gate around it. It is inside san francisco.

i want you to think about that as you are moving forward with this project.

It is not ok for folks to do this.

It is not any different from the police officers standing with

guns after katrina, trying to keep folks from coming out of new orleans.

it is done with money, keeping people out of a neighborhood by using legal means because you have the money to do it.

People who you are afraid of, who you are prejudiced against. That is not ok.

We need to stand up against this, because there is no other way to describe that but wrong.

>> you have a lot of disabled people, people going into that

neighborhood, they have things that they have to overcome right there.

When I hit this town, i found a

place to live in this big old victorian house.

There are 18 bedrooms, and it

was like 1/3 of halftime minimum

wage

there were a number of interesting characters. about a third of them were college students like myself.

That is where my life interacted

with Mr. Garcia.

What I wanted to show you is

that san francisco is gone, it is not coming back.

that building has exactly six people living in it.

Does the need for this kind of project.

>> are there any other members of the public that wish to speak?

Why don't we go back to the

appellant?

>> there is a preliminary

matter, the assertion that the

association walked away from the deal.

There is a memorandum of understanding that both sides

worked on, a condition of that

memorandum that the project

sponsor required was that they

take the appeal, they lack the legal standing to do. I want to set the record straight.

With regard to the comment that

the sud as an affordable

housing mechanism doesn't

create a precedent.

It would be pure speculation.

To conclude as much, I would

respond that such are a reasonably foreseeable development.

I would direct the supervisor's attention to policy 7.5 that

says the production of affordable housing through

process and zoning accommodations and prioritized affordable housing in the river approval process.

Be specific used in this

capacity should have, under --

come under ceqa review because they are easily foreseeable developments.

There are six sponsors to this legislation. Prior to the analysis.

Therefore, it means that this legislation is as good as past.

that is the type of city support

prior to analysis that the case was concerned with.

It was this kind of momentum

that has a negative affect on the fair and objective process.

going to the supervisor's

comment about the density bonus, I would like to point out that

the

density bonus law that compliance will be implemented.

This means that there should be

one ordinance, not a variety of sud's.

on this basis, a request that

the supervisors rescind it.

**Supervisor wiener:** is it your

position that an sud can't be

sponsored before ceqa

certification?

the mere introduction of an sud

or zoning legislation can't be

introduced or co-sponsored

before sequence -- ceqa?

>> because it has six

sponsors, it is basically a done deal.

**supervisor wiener:** if I

introduce an sud and my

colleagues add their name as a

co-sponsor, in your mind, that

would be invalid?

>> it creates the impression of city support prior to the completion of the ceqa analysis.

Under the factors, I believe this would show the kind of bureaucratic and financial momentum in conjunction with the fact that the mayor's office of housing -- it subverts the se ceqa process.

**Supervisor wiener:** supervisors can vote on the process once it has happened. We have seen that before. you are not signing in blood that you are voting for it.

>> you would be in a better position to answer that than I.

I don't dispute the lack of a rule, I realize it creates a lot of uncertainty and ambiguity.

The fact remains that this was a project that got pushed through >> thank you. Any additional questions?

Colleagues, any additional questions to any of the parties?

All right, at this time, this

hearing has been held and is closed.

These matters are in the hands of the board.

supervisor farrell.

>> thank you, President.

I understand that we are first dealing with ceqa.

I appreciate everyone coming out tonight.

This has been the source of a

lot of debate for years in district two.

But me first address ceqa. I appreciate the planning department answering the questions I had earlier.

I am going to make a motion to approve or item 36 and table 37 and 38.

>> this is seconded by supervisor elsbernd.

We need a roll-call vote because the house has changed. >> aye.

>> aye.

>> aye.

>> aye.

>> mar absent.

>> mirkarimi absent. >> aye.

>> there are nine ayes.

>> colleagues, at this time I would like to make a motion that we affirm the planning commission's decision on the

## **EXHIBIT “K”**

# SCIENCE FOR LAWYERS

ERIC YORK DROGIN, EDITOR

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## C H A P T E R

## 1

**BALLISTICS**

LISA STEELE

 **INTRODUCTION**

Ballistics, in the most general sense, is the study of firearms—"guns" in the vernacular. As a term of art, ballistics technically refers to the study of a bullet's path from the firearm, through the air, and into a target. In criminal investigations, however, ballistics is a shorthand term for firearms identification: the art of matching recovered bullets and their casings to the firearm from which they were fired.

Firearms identification is often treated as a subspeciality of toolmark identification. A toolmark expert attempts to match tools like screwdrivers and crowbars to the marks they make when used on objects. This chapter focuses solely on firearms and the forensic specialists who make these matches. "Ballistics" experts are more than toolmark specialists. They are generally experts in many aspects of firearms and testify about topics ranging from whether a specific object is, legally, a firearm, to intricate reconstructions of crime scene evidence.

The first use of "ballistics" as a synonym for firearms matching was by Calvin Goddard, an early pioneer in the field. Goddard picked the term "Forensic Ballistics" in the 1920s after much consideration, in an effort to employ terms that would be concise and meaningful. He later regretted that decision. Goddard noted in 1953 that "from that day onward, scientific identification of firearms has popularly been known as ballistics, and the more I struggle to correct the trend that I so innocently started, the wider the usage becomes."

However one wishes to name the field, it is an important one. As a lawyer, you are likely to come across firearms in a large number of criminal cases. Guns are subject to a variety of state and federal laws and regulations regarding possession, transportation, and use, the violation of which is often a criminal offense. Firearms are, of course, also used to commit a variety of crimes. A little bit of history, firearms terminology, and some basic physics will help counsel understand firearms evidence when it appears in a case. (See Figure 1-1.)

## THE SCIENCE OF BALLISTICS

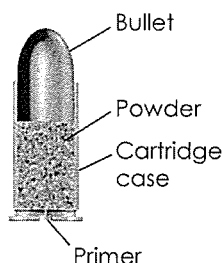
### A Brief History of Firearms Identification

*Today, it may be set down as a scientific fact, and a postwar discovery now first made public, that no two revolvers or pistols ever leave precisely the same marks upon a bullet, and that it now is possible and practicable to link the bullet to the weapon in virtually every instance.*

—W. S. Stout, *Fingerprinting Bullets*,  
SATURDAY EVENING POST (1925)

Early firearms such as matchlocks and flintlocks were made one at a time by individual gunsmiths. Each barrel and each bullet mold was unique. The barrel length, width, and the size of the bullets reflected the quirks of its maker. Even the screws that held together early firearms were hand-made and often specific in width and pitch of the threads. Those individual quirks made it possible for early investigators to match bullets by

Figure 1-1 Parts of a Cartridge



SOURCE: Jonathan A. Turner.

simple observation. An English investigator, a member of London's Bow Street Runners, was able to match a bullet to its mold in 1835 just by looking at the two items. He also matched a paper patch (used to create a seal between the bullet and gunpowder in the days before cartridges) to a newspaper in the suspect's house.

In the early 19th century, firearms and bullets began to be mass-produced. Rifling, the grooves cut into a barrel to make a bullet more stable as it flies, was standardized by manufacturers. A firearms maker or law enforcement officer could look at a bullet from a crime scene and say whether it was, in general, too large to come from a specific firearm, or whether the major rifling marks on the bullet matched those on the barrel. He could no longer match a bullet to a specific firearm among those made by one manufacturer.

Experts suspected that there might be fine marks and differences unique to each firearm, but invisible to the naked eye, that were made during the manufacturing process and accentuated by use and maintenance. Magnification proved to be the key. Indeed, experts found differences between firearms made by the same manufacturer, even between guns made one right after another on the same machines. A Parisian professor began photographing bullets from crime scenes and those fired from recovered weapons, enlarged them, and tried to compare them. Other experts tried rolling the bullets on inked paper, or on a soft material. Microscopes existed in the late 19th century, but it was hard to compare two enlargements simultaneously to see if the tiny marks on the bullet or cartridge were the same. As long as an investigator could inspect only one bullet at a time with his microscope, and had to keep the picture of it in his memory until he placed the comparison bullet under the microscope, there was a risk the investigator would miss noting key details or see a match that didn't exist.

Charles E. Waite, a legal investigator, became involved as an expert in the Stielow case, a New York homicide conviction in 1915 based on sloppy firearms identification testimony. Charles Stielow, sentenced to death for murder, was exonerated by Waite's investigations, which concluded that Stielow's revolver could not have fired the fatal bullets. Stielow was pardoned and released from prison.

Afterwards, Waite began visiting firearms companies and making notes about how firearms and ammunition were manufactured. Waite joined with Major Calvin Goddard, an officer in the Ordnance Corps; Philip Gravelle, a chemist; and John Fisher, a physicist, to form a private Bureau of Forensic Ballistics in New York City. These four men were among the first experts to study firearms identification.

Gravelle wanted to be able to look at both the crime scene evidence and a bullet fired from a recovered weapon at the same time. He developed a comparison microscope (two microscopes with a bridge so that objects can be compared in the same field of view) and a way to mount bullets on the microscope. Modern examiners' equipment and methods are essentially those that Gravelle pioneered.

Matching bullets to their firearms is only part of this history. In an early firearm, the shooter poured gunpowder into the barrel, added the bullet, added paper wadding to create a better gas seal, and tamped it all carefully into place with a rod. This was, of course, slow, imprecise, and dangerous if the powder ignited prematurely. Loose gunpowder was also likely to get damp and fail to ignite, and the shooter might under- or overload the powder charge if rushed. Just before the American Civil War, manufacturers created individual premeasured charges of powder and bullet held in a cylinder of paper or cloth, often coated with wax or grease, called cartridges. The cartridges were bitten or cut, the powder was poured into the barrel before loading the bullet, and the paper was used as wadding. (Some cartridges were soaked in potassium nitrate so that the whole thing, uncut, could be rammed powder end first into the barrel unopened and would likely fire.)

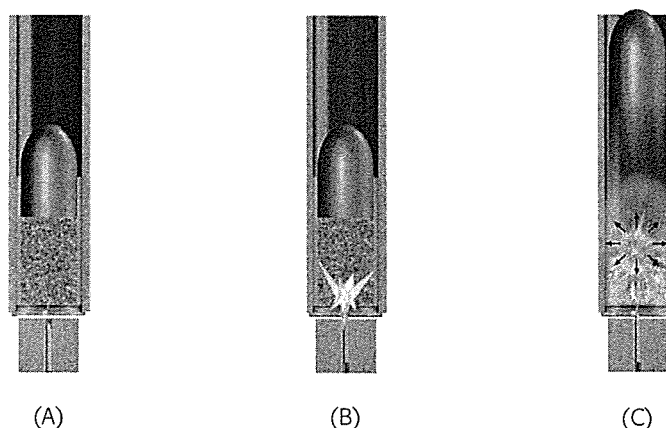
Ammunition makers looked for a way to combine bullet and powder into one durable moisture-resistant unit. The metal cartridge case was introduced in the mid-19th century. The cartridge case contained a percussion cap, or primer, in its base (Figure 1-2A). When the firing pin struck the primer, it in turn ignited the gunpowder (Figure 1-2B). The cartridge case expanded from the explosive gasses and was pressed against the *breech* (the back of the chamber) and the firing pin as the bullet was pushed down the barrel (Figure 1-2C). In rifles, shotguns, and semiautomatic pistols, the cartridge is extracted or ejected from the firearm after each shot so that a new round can be loaded and fired. Often the now-empty case ends up on the ground. In a revolver, several cartridges are loaded into the cylinder, which rotates after firing to place an unfired round between the firing pin and barrel. After all of the shots are fired, the shooter then manually removes the cartridges and can pocket them instead of leaving them for investigators to find.

Early experts suspected the breech marks and firing pin marks impressed into the relatively soft cartridge metal by the force of the shot could be used to match an expended cartridge to a specific firearm. In 1907, experts tried to do just that in the aftermath of a riot by U.S. Army soldiers near Brownsville, Texas. The examiners were able to match most

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**Figure 1-2 Cartridge Being Fired**

(A) Cartridge at rest in firearm; (B) firing pin igniting primer; and (C) primer igniting gunpowder and gas pressure forcing bullet from barrel.



SOURCE: Jonathan A. Turner.

of the cartridges to their rifles—their report was a milestone in firearms identification.

Firearms identification came to the public's attention in 1925 when the *Saturday Evening Post* published two articles called "Fingerprinting Bullets" on Waite's work. Goddard became famous for his work identifying firearms used in the Sacco and Vanzetti case in 1927 and in Chicago's St. Valentine's Day Massacre in 1929.

In the Sacco and Vanzetti case, Goddard test-fired a bullet from Sacco's gun into a wad of cotton and then put the ejected bullet on Gravelle's comparison microscope next to bullets found at the crime scene. The first two bullets did not match, but the third one did. (As discussed later, random variation in marking caused by minute differences in expansion, pressure, angles, or even bits of grit can make marks more or less visible.) Even a defense expert agreed that these two bullets had been fired from the same gun. Sacco and Vanzetti were executed.

In the St. Valentine's Day case, Goddard examined various fired bullets, shotgun pellets, and fired cartridge cases and concluded that one 12-gauge shotgun and two Thompson submachine guns were used in the crime. Goddard was later able to match the evidence to guns found in a suspect's home.

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Goddard also trained the first firearms identification expert at the FBI laboratory, founded in 1932. The FBI laboratory is now one of the largest employers and trainers of firearms examiners.

With the publication of three major firearms identification treatises in 1934 and 1935, the field had become accepted by the courts and by law enforcement in the United States, the United Kingdom, and Europe. For the most part, the techniques pioneered by Goddard and his contemporaries are still in use by modern firearms examiners. Digital imaging and databases allow firearms examiners to search for potential matches for crime scene evidence more quickly, but a definitive opinion still requires an examiner to compare the evidence on a microscope.

## Firearms

One of an examiner's most basic tasks is to explain how firearms and ammunition work. Juries, judges, and lawyers are often unfamiliar with this complex and sometimes arcane topic. Because statutes often distinguish between different kinds of firearms, and between objects that look like a handgun or rifle (like air pistols, paint ball guns, starter pistols, non-working replicas, or even toys shaped and painted to look like actual firearms) and those that can discharge a bullet, the firearms examiner is often asked to explain whether an object meets a statutory definition.

States, and the federal government, have been regulating the possession, carrying, transportation, and sale of firearms since the early 19th century. These statutes often define the word "firearm" and divide guns into types like rifles, shotguns, and handguns. When a police officer finds something that looks like a firearm at a crime scene or takes it from a suspect, an examiner makes sure that the object is an actual working firearm and not broken, intentionally made permanently unusable or "demilitarized," a nonworking replica, or just a gun-shaped object like a toy. Criminal charges and penalties can vary if, for example, the object is "a weapon from which a shot can be fired" and whether the shot is fired by a gaseous combustion, like gunpowder, or by air pressure or a spring like a BB or pellet gun.

Firearms examiners may also have to answer questions about whether a firearm was broken if a suspect says a shooting was an accident and the firearm "went off" by itself. The firearm may have internal safety devices that failed, or it may be a weapon, such as a replica of a historic handgun, that was not made with such features. Examiners also look for illegal modifications to firearms—such as making a shotgun's barrel shorter than the minimum legal length (generally 18 inches) to improve its concealability, or obscuring the firearm's serial number.

## What Kind of Firearm Is It?

If the object is a working firearm, the examiner determines what kind of gun it is. Concealable weapons like handguns and short-barreled shotguns were among the first to be regulated. New York's Sullivan Law, passed in 1911, requires people to acquire a license to possess or carry a firearm small enough to conceal. The federal Mailing of Firearms Act, passed in 1927, prohibits sending firearms that can be concealed on a person through the mail. Since the early 20th century, many other statutes have distinguished between rifles and shotguns, and handguns. Thus, an examiner may have to determine whether a specific firearm meets the definition of a handgun, generally by measuring the length of its barrel, or is legally a rifle or shotgun.

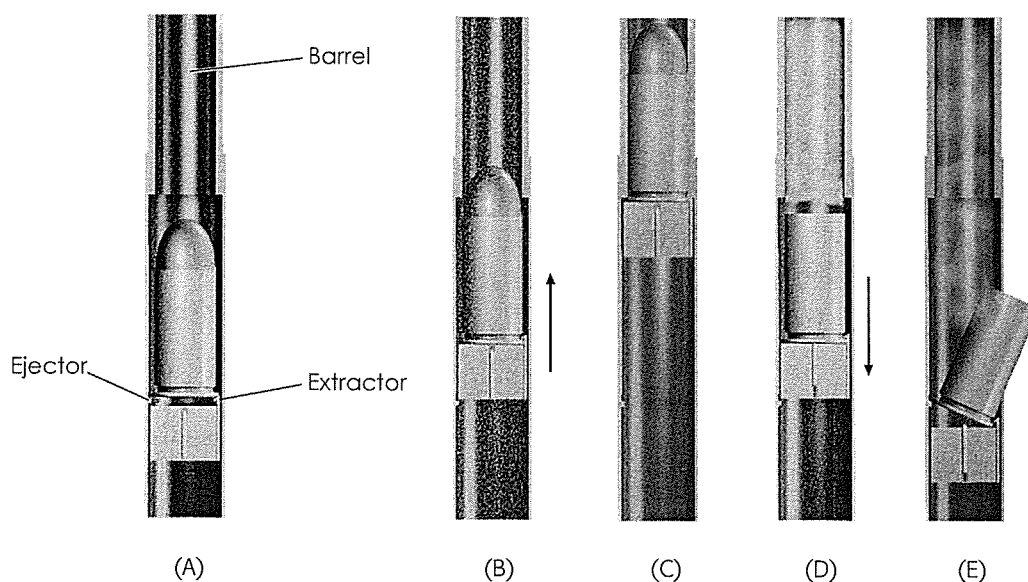
Rifles and shotguns are relatively large firearms. They are designed to shoot targets, often game animals, at long range and so have long barrels to improve the bullet's stability, a heavier barrel and chamber to contain the force of more gunpowder, and a stock to brace the firearm against the user's shoulder for more stability. Because these guns are hard to conceal, and often used for hunting, target shooting, and other sports, they are often less strictly regulated than handguns.

Rifles (and most handguns) have a barrel with grooves cut into it (*rifling*) to make the bullet more stable and accurate. Shotguns have a smooth barrel and often fire one cartridge containing many small round projectiles (*shot*). Rifles and shotguns can be *single shot*—the firearm is loaded, chambered, cocked, and fired, and the spent cartridge is extracted in a series of manual steps. A *semiautomatic* firearm performs all of those steps, except the firing of the next cartridge, automatically. (See Figure 1-3.) In some states, certain semiautomatic rifles and shotguns are defined as *assault weapons*; consequently, they either require specific permits or are prohibited entirely. A *machine gun* is a fully automatic firearm; when the shooter pulls the trigger, the firearm keeps firing until the trigger is released or it runs out of ammunition. Machine guns can be rifles or handguns. Federal and state law restricts transfer and transporting of machine guns.

As noted previously, handguns are designed, in general, as concealable, short range self-defense, target-shooting, and hunting weapons. Normally, the barrel is less than 16 inches long, to make the handgun easier to carry. Often, they are made of light, strong materials to make them more convenient to carry. Typically handguns are divided into revolvers and semiautomatic pistols. ("Pistol" historically refers to any handgun, but it is often used either as a synonym for a semiautomatic handgun or to clarify that the semiautomatic item is a handgun and not a rifle.

### Figure 1-3 Sequence of Firing in Semiautomatic Firearm

(A) Cartridge in open chamber; (B) cartridge moving forward as chamber closed (extractor engaged); (C) cartridge at the moment of firing; (D) cartridge at the moment after firing, bullet is being driven out of the barrel and gas pressure forces the cartridge back to open the chamber; and (E) cartridge being ejected from the open chamber by the extractor and ejector, which can both leave marks on the cartridge.



SOURCE: Jonathan A. Turner.

Historically, there was a semiautomatic revolver; it is now a valuable collector's item unlikely to be found at a crime scene.) Some states limit how many cartridges a handgun can hold at one time. For example, Massachusetts requires a specific firearms permit for *large capacity* handguns (those capable of holding more than 10 cartridges at the same time) that is different from the permit for any other handgun.

Single shot "zip guns" are improvised or handmade handguns often made from pipes or, in earlier decades, telescoping car antennas. Any handmade weapon capable of firing a cartridge is often separately prohibited by statute.

Occasionally, an examiner will refer to a handgun colloquially as a "Saturday night special" or a "junk" gun. Unless your jurisdiction uses

either of these terms in its statutes or regulations, defense counsel should object if an examiner characterizes a firearm in this manner. These colloquial phrases can be highly prejudicial and are not relevant to most criminal trials. These terms suggests that the handgun is the type of firearm that would only be used by a criminal and is not useful for target-shooting, hunting, or self-defense. Indeed, these handguns generally are not designed for target-shooting or hunting—they are small, very basic, inexpensive handguns that can be carried in a pocket rather than in a special holster and are intended to be accurate at short ranges, such as those typically encountered in a self-defense situation. Thus, they are affordable by people who intend to carry and use them solely for self-defense and who do not want or need the features of a larger multipurpose handgun. Also, some jurors may be aware that there is a racial component to phrases like “Saturday night special.” Many statutes banning inexpensive handguns are based on laws passed in Tennessee, Arkansas, Alabama, and other southern states after the Civil War to ban firearms that newly enfranchised black citizens could afford. For example, in the Florida case of *Watson v. Stone* (1941), a concurring opinion noted that “the Act was passed for the purpose of disarming the negro laborers. . . . The statute was never intended to be applied to the white population and in practice has never been so applied.”

Not all rifles and handguns use gunpowder, or modern metal ammunition. Compressed-air-powered handguns and rifles are often lightly regulated, if regulated at all. Many states also exempt historic firearms, and working replicas thereof, which cannot use modern ammunition, like muskets, matchlocks, flintlocks, and percussion-cap-based weapons from most regulations. The “black-powder” firearms are primarily owned and used by collectors and hobbyists—they are rarely involved in crimes.

## What Kind of Ammunition Is It?

Examiners may also be asked to describe bullets and ammunition to juries explaining different *calibers* (diameters of bullets) and bullet types, such as the difference between a jacketed and unjacketed bullet, or between a round-nosed bullet and a hollow-point bullet. Some kinds of bullets are regulated by federal or state law. Armor-piercing bullets, for example, are regulated by federal law that defines armor-piercing ammunition and limits its sale to law enforcement and the military. In New Jersey, it is illegal for anyone other than military and law enforcement personnel to possess hollow-point ammunition.

Ideally, an examiner will describe ammunition using precise language. The standard cartridge issued to New York City Police Department (NYPD) officers is a CCI-Speer 124-grain Gold Dot +P JHP (a jacketed hollow-point design) for 9mm semiautomatic handguns and a Federal 158-grain +P Nyclad LHP (a lead hollow-point design) for .38 Special revolvers. What does this mean?

The most basic information about a cartridge is its caliber. "Caliber" is a confusing term of art. In theory, the caliber is the diameter of the associated firearm's barrel, not including the depth of the rifling grooves. Caliber is usually given in 1/100th of an inch (.22, .45), in millimeters (9mm, 40mm), or in "gauges" (12 gauge, 20 gauge). However, there are many customs and historical variations—.38 Smith & Wesson" ammunition is not the same width as ".38 Special" ammunition, even though one might assume both to be 38/100ths of an inch wide. The .38 Special cartridge is closer to .357 inches in diameter (and indeed can be fired from a handgun designed for .357 ammunition). A .38 Smith & Wesson cartridge will not physically fit into a firearm designed for .38 Special ammunition. Precision, especially where .38 caliber bullets are involved, can be very important.

Revolver and semiautomatic cartridges are not readily interchangeable—the revolver cartridge has a small rim around its base to hold the cartridge in place when it is loaded into the revolver cylinder. The base of a semiautomatic cartridge is flush with the cartridge sides, but there is a small groove cut for the extractor to grip when it ejects the round. It is possible to load a semiautomatic pistol cartridge into a revolver; there are ammunition clips designed for this purpose. If one loads a revolver cartridge into a semiautomatic pistol, the firearm is likely to malfunction in use.

Returning to the example, the first words in the description name the manufacturer. The semiautomatic handgun bullet is made by Cascade Cartridge, Inc. (CCI). The revolver bullet is made by the Federal Cartridge Company. The name of the manufacturer may tell the expert and the jury something about the bullet's construction and quality.

The next piece of information is the bullet's weight. The semiautomatic bullet weights 124 grains; the revolver bullet weights 158 grains. (The weight of bullets and of powder is traditionally given in "grains" which are 1/7000 of a pound. In this case, the weight is that of the bullet, plus jacket, if any.) The bullet's weight is important because it affects how much force (kinetic energy) the bullet has when it strikes a target. Doubling the bullet's weight doubles the kinetic energy, assuming that the bullet's velocity is constant.

Next, the style or type of bullet is described. CCI's Gold Dot bullet has a copper jacket, which is electrochemically bonded to the lead core,

instead of just pushing or pouring the lead core into the jacket. This makes it less likely that the jacket and core will separate on impact. (Separation can cause the bullet to behave oddly—tumbling or breaking apart, and having less than the expected wounding effect.) The Nyclad bullet has a nylon jacket around the lead bullet. These jackets were not designed to affect damage; jackets were designed for semiautomatic weapons to prevent malfunctions caused when bits of lead from a plain lead bullet are deposited on the ramp and action of the firearm when large numbers of lead bullets are fired. A semiautomatic weapon can fire lead bullets at the risk of malfunctions. Jackets do not affect a revolver's operation, but they can keep down the amount of lead dust released when the bullet is fired—a health concern for officers, especially those using indoor firing ranges for training.

Both bullets are designated as “+P”. The firearms industry has a standard for the gas pressure generated by each type of ammunition. A +P cartridge generates higher gas pressure than the standard cartridge, which translates into a higher muzzle velocity, without making the cartridge physically larger. Doubling a bullet's velocity quadruples the amount of kinetic energy it has when it strikes a target. *Magnum* has similar connotations of higher muzzle velocity in the same diameter cartridge. A magnum bullet, such as the .357 Magnum, or Harry Callahan's .44 Magnum, is generally longer than an equivalent round of the same diameter. The longer cartridge holds more gunpowder and can generate a higher muzzle velocity. (Both “+P” and “Magnum” have associated industry standards for gas pressures generated in the chamber.)

Finally, both bullets are hollow-point, which means that they literally have a small hole in their “nose” and are designed to expand when they hit a target. Hollow-point ammunition is commonly used by police officers, federal agents, and citizens for self-defense. By expanding, the bullet increases its drag and tends to remain inside the target—this is believed to increase the chance that the wound will stop an aggressor, although medical examiners have been unable to show any difference in lethality between hollow-point and traditional round-nosed lead bullets. Also, the bullet is less likely to go through standard building materials if it misses the target and more likely to be stopped by police body armor if an officer gets in the way of a round fired by another officer. (Body armor is not commonly used by criminals.)

Occasionally, an examiner will describe a piece of evidence as a “cop killer” bullet. Again, defense counsel should object to this misleading and prejudicial term. The phrase was created by media reports about the Teflon-coated “KTW bullet,” named for its three inventors. The KTW

bullet has a brass or tungsten core, which helps it penetrate automobile glass instead of being deflected by the angled surface. It also has a Teflon coating, which protects the handgun barrel from excessive wear and makes it better able to penetrate smooth surfaces like automobile glass and metal when it strikes at an oblique angle.

These bullets have not been available for sale to the general public since the 1960s. They were only available to the military and law enforcement. In 1982, NBC television ran a sensational story falsely claiming that the KTW bullet could penetrate police body armor, creating a mythical “cop killer” bullet. The publicity resulted in a federal law which limits the sale of actual armor-piercing ammunition to law enforcement and the military. Winchester’s Black Talon bullet was another victim of hysteria about its purported effects.

As an aside, police body armor has to balance comfort and wearability with protection. If the armor is too bulky and uncomfortable, officers will not wear it routinely, which risks their safety. The federal government sets standards for police body armor—the most common type is designed to protect officers from most handgun ammunition. Handguns are the most common weapon faced by police. However, nearly any bullet fired from a rifle will penetrate typical body armor because rifle ammunition is designed to shoot game at a distance and so has a higher muzzle velocity. This does not make rifle bullets armor-piercing or cop killer bullets. Actual armor-piercing ammunition has a solid metal core and is designed to penetrate ceramic and metal armor plates used in tactical (SWAT and military) body armor.

## Where Was the Bullet Fired From?

The distance between the muzzle of a firearm and the object or person shot may distinguish between an accident, a self-defense shooting, suicide, and homicide. In some states, examiners perform gunshot residues analysis to estimate the distance between the muzzle of a firearm and whatever the bullet struck. A medical examiner may be responsible for this estimate if the bullet killed a victim.

When the firing pin ignites the gunpowder, most of the gases produced come out of the barrel, along with bits of unburned and burning gunpowder, soot, and sometimes tiny fragments of the bullet as it scrapes along the rifling.

If the firearm’s muzzle is directly in contact with an object, all of that material has nowhere else to go but into the object—the gases may tear clothing, or flesh; particles will be found in the bullet hole.

In general, as the distance increases from contact to 2 feet (more or less) from the target, particles of gunshot residue (lead, antimony, and barium), unburned and burned gunpowder, and soot will be found in decreasing amounts. At close range, from 0 to 2 inches, the target may be scorched or seared by hot gasses from the muzzle; blood, tissue, and other materials may be blown back onto the firearm and into the barrel. Burning, burned, and unburned powder may hit and embed into the skin and cause marks called *tattooing*. At a greater distance, roughly 2 to 10 inches, the target will not be scorched, but there will be a black smudge composed of fine particles of metal and bits of burned and unburned gunpowder. From distances greater than 10 inches, only larger grains of powder and metal will be found around the bullet hole. This is, of course, a rough approximation. The exact distances will vary by firearm, ammunition, and environmental conditions.

Finally, at some point, the velocity of all of the particles except the bullet itself is too low for the residue to reach the target. The examiner can only say that the muzzle was more than this distance from the target. It might have been just beyond this distance, or in the next room, or across the street, up to the maximum range of the firearm and the practical limits of the crime scene. There may also have been an intermediate soft object which absorbed the gunshot residue, making it appear that the shot was fired from a longer range.

To make a valid distance determination, the examiner will need to test-fire the recovered firearm, using the same brand, weight, and kind of ammunition. Using a different lot of the same brand of ammunition can sometimes yield a misleading result. Counsel should carefully review the examiner's report to make sure he or she used the correct method for this test.

If police do not recover a firearm, then an examiner may be able to make a rough estimate of the distance between muzzle and target based on the caliber of the bullet, markings on the bullet suggesting what kind of firearm it came from, and the type of particles found around the wound. If a firearm is found and matched, the examiner may test-fire it at various distances to try to match the pattern of residue found at the crime scene.

The cloud of gases also can deposit gunshot residue on the shooter's hands and body. Automatic and semiautomatic handguns use a portion of the gas to eject the now-expanded casing and load a new cartridge. Revolvers often have a small gap between the cylinder and the barrel where gases can exit. (Firearms are designed to keep these hot gases from harming the shooter, although they can burn someone holding the firearm improperly, such as during a struggle over the firearm.) If a person's hands are promptly tested after a shooting, an expert may be able to find gunshot

residue. However, if the person has washed his or her hands, or normally handled objects over a few hours, any particles will likely be lost.

The paraffin test, occasionally mentioned in older cases or books, is no longer used because it is unreliable. Modern tests swab the target's hands or clothing and analyze the results using a scanning electron microscope (SEM) analysis test.

If an expert finds gunshot residue, this does not necessarily mean that the person fired a firearm. He or she could have held a firearm after it was fired; been near the person who fired the weapon; been contaminated by police officers who recently fired weapons or handled a fired weapon; or been in contact with lead, antimony, and barium through work or hobbies.

Note that for most ammunition all three elements—lead, antimony, and barium—must be present in order for the examiner to testify that gunshot residue is present. Two of the three elements is not enough according to many police laboratories. A few, including the Maryland State Police lab, deem some tests showing only two components adequate to conclude that gunshot residue is present. For example, if .22 caliber ammunition is involved, it may have originally contained only two of the three elements, and thus a finding of those two elements would indicate that gunshot residue is present.

If defense counsel is aware that a gunshot residue test found only one or two elements of gunshot residue, and that all three should have been present, he or she should move to exclude this evidence as irrelevant and as more prejudicial than probative. Many judges will allow testimony about what was found, so long as the examiner also testifies that all three elements are needed for a conclusive result. However, in one recent Minnesota case, *State v. Moua*, the trial court excluded testimony about the results of a gunshot residue test due to concerns about contamination prior to the test samples being taken. The prosecutor may argue that the presence of one or more of the components of gunpowder corroborates other evidence in the case that the client fired a gun, even if those elements are not conclusive in themselves.

Examiners may also try to reconstruct the trajectory (flight path) of the bullet from muzzle to target using rods, lasers, and other devices. When a bullet leaves the muzzle of a firearm, it travels (more or less) in a straight line until it hits something. Over long distances, wind and gravity both affect the bullet; however, most bullets used in crimes are fired at relatively short ranges where these factors can be simplified or ignored. Examiners may carefully place a rod through the holes left by a bullet in objects, or even bodies, to try to figure out where the bullet was fired from. Once the bullet hits an object, however, it may be deflected or deformed by

it, and travel in an unpredictable way. An examiner may be able to find scuffs or abrasions on materials produced by the bullet striking an object and being deflected by it.

Often the numbers assigned to multiple wounds by medical examiners, doctors, and firearms experts are arbitrary. It is difficult to determine the order in which bullets hit a target or person. Prosecutors and defense counsel should make sure that the jury or judge understands that the numbering does not indicate order. If an expert has an opinion about the order of shots, carefully review the assumptions underlying the opinion.

Also, a trajectory determination may tell the expert where the shooter and target were at the instant the shot struck. It does not necessarily reveal what happened in the prior instants, during the tenths of seconds it took the person holding the gun to decide to shoot, draw the firearm, and fire it. Studies show that a moderately healthy person can turn his or her torso 180 degrees in 0.53 seconds and can turn his or her entire body 180 degrees in 0.667 seconds. This is very close to the amount of time it takes a trained police officer to fire a drawn handgun upon seeing or hearing a signal. Thus, it is possible that at the moment a police officer or gun owner began to fire at an aggressor, the aggressor was facing him or her. By the time the officer or owner completed firing the handgun, the aggressor had turned around, leading to a shot in the back. Counsel should ask the examiner about the assumptions underlying a trajectory determination and whether the shooter and the person shot may have been in motion during the encounter.

A bullet may not take a straight path through the body. If the person who was shot died, the autopsy report will generally include a description of the bullet's track. If the person who was shot survived, the treating physicians will estimate the wound track based on their examination and treatment. The doctor may be mistaken, even about such basic elements as which wound is the entry wound and which is the exit wound. Ask the testifying physician about his or her training in this area, assumptions, and specific findings, if it is important to your case. (If the bullet has not been removed from the person shot, be wary of caliber estimates based on the size of the wounds or on x-rays.)

A firearms owner who has tried to locate every casing fired after target practice on an outdoor range will be familiar with the perverse ability of semiautomatic cartridge casings to bounce, roll, and disappear in sand, tufts of grass, shadows, crevices in concrete pavement, and depressions. Most semiautomatic firearms eject the casing to the right of the pistol's frame. However, the ejection pattern can change if the firearm is held in the left hand or held sideways. In addition, casings are round and light. They bounce and

roll on the ground and can be kicked, crushed, or blown by wind or passing cars. Some are even small enough to get stuck in the treads of a sneaker or boot and be carried away from the scene entirely. If an examiner attempts to estimate the shooter's position, counsel should carefully review the expert's methodology to ensure that the estimate is scientifically defensible.

## Firearms Identification

*The automatic pistol leaves plenty of evidence of its presence in the form of empty fired cases which the guilty party rarely carries to recover, his main idea being to get away from there, and these can tell a very revealing story if properly assayed.*

—Calvin Goddard, Address to Southern Police Institute,  
University of Louisville (May 1953)

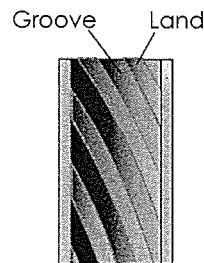
When investigators find a bullet at a crime scene, it can tell an examiner the caliber of the gun that fired it, the type of bullet, and possibly the manufacturer and model of the firearm. If police find expended cartridge cases, these also indicate the caliber of the weapon used, its type (rifle/shotgun/revolver/semiautomatic pistol), and possibly the firearm's manufacturer. If police also recover a gun from a suspect, an expert would likely be able to match the bullet and cartridge case to that specific firearm. Experts can do this by looking at the marks the firearm makes on the cartridge and the bullet as it is fired.

When a cartridge is fired, the firing pin strikes the primer. This impresses the firing pin's mark into the soft metal of the primer. The primer contains a tiny bit of explosive, which, when hit, ignites the propellant. The propellant burns rapidly, producing gases that exert pressure in all directions—on the head of the cartridge case, on the walls of the cartridge case, and on the bullet. The bullet is the only part able to move, and is forced out of the barrel, leaving the cartridge case behind.

Most firearms have a rifled barrel. Parallel spiral grooves are cut into the inner surface of the barrel. The space between the grooves is called the *lands* (see Figure 1-4). The grooves twist to the right or left. The number of grooves, their width and depth, and the angle of the twist (pitch) vary by manufacturer. Most American-made firearms use a right twist; Colt uses a left twist. Glock, a popular handgun manufacturer, uses a unique polygonal rifling system. The FBI maintains a database, the General Rifling Characteristics (GRC) file, which is organized by caliber, number of lands and grooves, direction of twist, and width of lands and grooves, to help an examiner figure out the origin of a recovered bullet.

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Figure 1-4 Firearm Barrel Showing Rifling



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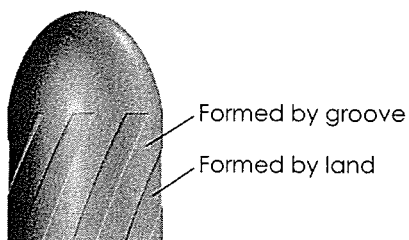
SOURCE: Jonathan A. Turner.

As a bullet passes through the barrel, it engages the lands, forcing the bullet to rotate. The spin acts like a gyroscope to stabilize the bullet and keep its nose pointed in a consistent direction. (This is the same principle behind throwing a football.) The spin makes the bullet more accurate over longer ranges. Because the bullet literally scrapes along the side of the barrel, the land and groove's impressions and other microscopic details are etched into the side of the bullet. These fine microscopic details are called *striations* or *striae*. A cartridge case may also receive striated marks from the extractor and magazine lips in firearms that have these features. (See Figure 1-5.)

Newton's third law requires an equal and opposite reaction to any action. When a bullet is fired, the cartridge is pressed into the breech by the

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Figure 1-5 Fired Bullets Showing Rifling Marks



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SOURCE: Jonathan A. Turner.

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gas pressure. This impresses any marks on the steel breech face onto the back of the softer metal cartridge and the primer. The primer is also pressed back toward the firing pin, which may further impress its mark. The cartridge case may also be marked by the ejector in a firearm, which has this mechanism. These marks are called *impressed marks*.

The marks, which identify the gross properties of the firearm—caliber, number of lands and grooves, and direction of rifling twist—are the firearm's *class* characteristics. The marks are often visible to the naked eye. These will be the same for any bullet fired from any firearm of the same make and model, and often of several different makes and models. Reference works list the class characteristics for each manufacturer, which would enable an examiner to determine what type of firearm was used to fire the recovered bullet.

Trying to match a recovered bullet or cartridge case to a specific firearm is more difficult. Firearm identification assumes that there are *individual* characteristics that are unique and consistent to one specific firearm. In theory, it is not possible to make two machined surfaces that are microscopically identical. Even rifled barrels manufactured consecutively can be distinguished because the cutting and grinding tools are blunted and worn each time they are used, leaving minute variations. Similarly, firing pins and the breech are believed to leave unique markings.

Normal wear and maintenance, corrosion, rust, dirt, and debris will change markings over time, creating both permanent individual characteristics and temporary *accidental* characteristics. These changes can make it easier to tell one firearm from others made by the same manufacturer. On the other hand, the nonpermanence of markings, even from one test-firing to the next, makes a firearms identification match much more difficult than either a DNA or fingerprint comparison. Some studies have compared bullets and cartridge casings from firearms over the course of hundreds, even a few thousand, of fired rounds. The studies' authors report being able to find consistent markings despite wear and other accidental factors.

This examination is complicated by *subclass* characteristics. These are markings caused by temporary conditions in the manufacturing process, such as a chipped or broken tool, and therefore are the same on many firearms in a given production run, though they are not a permanent feature of the class. An examiner must decide whether a mark is, thus, an individual mark unique to a specific firearm or a subclass mark shared by many firearms made at the same time.

If a firearm is recovered, the examiner compares microscopic marks on the cartridge or bullet recovered from the crime scene with test bullets and cartridge cases fired from the recovered weapon into a water

tank or bullet trap to see if the markings are consistent. If no weapon has been recovered, the examiner compares the crime scene bullets to each other, and the cartridge cases to each other, to see if the markings are consistent.

According to the AFTE Criteria for Identification Committee, an identification means that "the likelihood another tool could have made the mark is so remote as to be considered a practical impossibility." When examining evidence, the examiner can come to four conclusions:

1. *Identification*, defined in the Association of Firearms and Toolmark Examiners (AFTE) Glossary as "[a]greement of a combination of individual characteristics and all discernible class characteristics where the extent of agreement exceeds that which can occur in the comparison of toolmarks made by different tools and is consistent with the agreement demonstrated by toolmarks known to have been produced by the same tool."
2. *Elimination*, defined as "[s]ignificant disagreement of discernible class characteristics and/or individual characteristics."
3. *Inconclusive*, defined as either "[s]ome agreement of individual characteristics and all discernible class characteristics, but insufficient for an identification" or "[a]greement of all discernible class characteristics without agreement or disagreement of individual characteristics due to an absence, insufficiency, or lack of reproducibility" or "[a]greement of all discernible class characteristics and disagreement of individual characteristics, but insufficient for an elimination."
4. *Unsuitable* for microscopic comparison.

Note that the examiner's conclusion is all-or-nothing. The recovered evidence can be matched to one, and only one, firearm under this definition. The AFTE definitions are not binding, but most examiners will not offer testimony about statistical probabilities.

In reaching this conclusion, the examiner is looking for a certain quality and quantity of agreement which in turn is mentally compared to the closest known nonmatch the examiner can recall seeing. Some differences always exist between a recovered bullet and a test bullet, even if they come from the same weapon. Similarly, one would expect some differences between cartridges that come from the same weapon.

In 1997, an article by Joseph J. Masson proposed looking for consecutive matching striae (CMS). CMS analyzes the pattern of striated marks to determine how many consecutive matching striae are needed to minimize the likelihood that another firearm was the source of the markings on the

recovered evidence. If the examiner is comparing three-dimensional images of the striae, he or she needs to find either one group of six consecutive matching striae or two different groups of at least three consecutive matching striae in the same relative position to claim a match exists. If a two-dimensional image (a mark with minimal discernable depth) is used, the examiner needs to find either one group of eight continuous matching striae or two groups of at least five continuous matching striae in the same relative position to claim a match exists. There is presently a dispute between experts who prefer the CMS method and those who prefer the more subjective approach. They have raised questions about the CMS methodology and about whether CMS should be used to determine whether a match exists or can be used after the examiner has concluded that a match exists to validate that conclusion.

Some firearms are harder to match than others. In .22 caliber firearms—the smallest common handgun caliber—roughly 80 percent of test-fired bullets cannot be matched to each other. This is partly due to the small size of the bullet and plating on some .22 caliber bullets flaking away during firing and damaging the markings. Glock's polygonal rifling is also harder to individually match than more standard rifling patterns.

If police have not recovered a firearm, or if they suspect that the crime might be linked to other crimes, examiners can look for similar evidence in the National Integrated Ballistics Information Network/Integrated Ballistics Identification System (NIBIN/IBIS). The NIBIN is a collection of digital images of markings on bullets and cartridge cases from crime scenes nationwide. An examiner puts the bullet or cartridge case onto a specially designed holder and creates a digital image, which is sent into a Data Acquisition Station (DAS). The NIBIN/IBIS system suggests possible matching bullets and cases based on a complex mathematical algorithm. The examiner will still need to look at the actual bullets or cartridge cases on a comparison microscope to decide whether there is a match. Unfortunately, some studies of the NIBIN/IBIS system have shown that even the top 10 or 15 candidates suggested by the system did not include cartridge cases known to have been fired by the same firearm. Certainly, there is room for improvement both in the image capture system and the comparison algorithms.

Maryland and New York also have a state database that contains images from every handgun sold in those states. Legislative proposals to take "*ballistic fingerprints*" of all handguns have been made in other states; Maryland and New York have spent millions of dollars on their systems and have had few investigative leads, leading some law enforcement officials to oppose these proposals as lacking cost-effectiveness.



## BALLISTICS PRACTICE

### Training and Qualifications

*Of all the various forensic laboratory workers, it can be truthfully said that the firearms examiner is one of the most composite, most varied in his skills, personal traits, and attributes. He is thus because this compositeness comes naturally to him or it is forced upon him. Without it he is not truly a well rounded, "complete" firearms examiner.*

—Steve Molnar, *What Is a Firearms Examiner*,  
AFTE NEWSLETTER (1970)

An agency hiring a new examiner looks for many traits. Honesty, patience, inquisitiveness, and an interest in firearms are all important. Firearms identification involves a significant amount of work with microscopes and photography, both important skills for the examiner.

Many laboratories look for applicants with a college degree in a scientific major like chemistry or physics. Not all examiners have science degrees. Many current firearms examiners learned their craft based on practical experience, with some classroom study. Here, as in many other forensic disciplines, there are no national standards or licenses. Most states do not license or accredit firearms examiners or many other forensic examiners. The national Association of Firearms and Toolmark Examiners offers certification for its members in Firearm Evidence Examination and Identification and in Gunshot Residue Evidence Examination and Identification. AFTE members are expected to abide by its code of ethics (available on its website at [http://afte.org/AssociationInfo/a\\_codeofethics.htm](http://afte.org/AssociationInfo/a_codeofethics.htm)).

The firearms and toolmark unit of an agency may be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). Some states have accreditation programs for crime laboratories as well. The laboratory-based accreditation includes requirements for employee proficiency testing, but it is not a certification of the individual examiner.

Once hired, examiners are often trained by their employer. Some agencies send their trainees to classes taught by larger agencies or laboratories. The FBI and the ATF (Bureau of Alcohol, Tobacco, Firearms and Explosives) offer training for their own agents, and for others, in firearms identification.

In addition to law-enforcement and on-the-job training, many examiners also attend armorer's schools offered by firearms makers. These

classes are designed for gunsmiths who repair or adjust the manufacturer's products. Some of these schools teach the examiner to build a firearm from parts; others teach using firearms returned to the manufacturer for repairs. This training teaches the examiner how the firearm was made and helps him or her to recognize when that company's products have been modified in unconventional ways and to diagnose malfunctions.

Experts often tour firearms factories to see how firearms barrels are made; how the breech is milled and finished; how much the cutting equipment is dulled by a single barrel; and how often the equipment is sharpened. This can help the examiner explain to jurors why the marks found on a specific firearm are unique to that gun and why even the firearms made before and after it should have distinctly different marks.

Many examiners are also target-shooters and hunters. Shooting firearms gives an examiner a feel for how firearms are used and handled. It can also help an examiner analyze whether an injury was an accident, negligence, or a deliberate act.

## Practical Considerations in a Firearms Case

Safety is a key concern whenever a firearm is introduced into evidence. Normally, police will have ensured that the firearm is not loaded when it is submitted to the trial court; however, a lawyer should still check the firearm before handling it and should have the firearm checked in the judge or jury's presence when the firearm is marked as an exhibit. (If you do not know how to check a specific firearm, research this ahead of time by talking with a firearms dealer, the manufacturer, or an expert.) Although no one has yet been shot in a courtroom by an exhibit assumed to be unloaded, a moment's precaution will maintain that safety record. In addition, checking the firearm in front of the jurors or judge will reassure them that the firearm is safe and that the lawyers are familiar with safe gun-handling.

Firearms instructors teach students that it is unsafe to point the muzzle of even an unloaded firearm at any person or to put a finger inside the trigger guard while handling it. Resist the temptation to point the firearm at anyone or put your finger on the trigger (rest it on or along the frame instead). If someone has a specific reason to manipulate the trigger, make certain the muzzle is pointed in a safe direction (at an object or wall solid enough to absorb an accidental shot) during this process. If both firearms and ammunition are exhibits, think carefully about the pros and cons of sending both into the jury room at the same time.

In general, look at the physical evidence. Is the firearm in good repair? Are the recovered cartridge cases, bullets, and fragments in good condition? How might their condition affect the examiner's results? Is the condition consistent with the prosecution's theory of the case?

What happened at the crime scene between the crime and the police arrival? Could evidence have been removed, moved, or damaged by the victims or bystanders?

What did the police do at the crime scene? Look at the crime scene photographs and sketches to see where evidence was found. Look specifically at the chain of custody documentation for any indication of fabrication or fraud. (Overzealous investigators have falsified evidence in fingerprint cases; it could happen in other cases as well.)

What did the examiner know when the evidence was submitted to him or her? Was this a high-profile case? Was the examiner rushed? Did the examiner have any expectation about the results of his or her tests before making them?

What methods were used to determine the examiner's opinion? Are they the methods recommended in the examiner's training materials and/or laboratory procedures? Are those methods supported by published, peer-reviewed research? Does that research use statistically valid sample sizes and blind testing?

Ask specifically for interim reports, bench notes, and photomicrographs showing any match.

Ask specifically for interim reports, notes, and photographs of any distance determination. Make sure the examiner matched the ammunition type as closely as possible in making this test.

Ask specifically for notes and reports on gunshot residue testing. Check to make sure that proper control samples were taken to identify contamination in the environment. Check to make sure that the officers who arrested and handled the suspect before and during testing did not recently fire a gun or handle a fired gun.

How many comparison bullets did the examiner create? Were they matched by ammunition type? How many bullets had to be compared to find a match?

What is the examiner's criteria for an identification? How did he or she reach that conclusion?

If there is a photomicrograph, is it of the entire circumference, or just the part that matches most closely?

What kind of training does the examiner have? How does that compare with national law enforcement agencies and similar experts in large departments and/or state police agencies in the area? Is the laboratory accredited?

Has the examiner taken proficiency or certification tests? How often? How difficult are the tests in comparison with typical crime scene evidence?

Is it possible that the breech face marks used for the identification are preexisting marks on the ammunition made during its manufacture and not those made by the firearm?

Are there any articles in the forensic identification trade journals discussing this specific firearm or ammunition? Do the articles mention difficulties in making accurate identifications or factors that might produce a false positive result?

## Legal Criticisms of Ballistics

*We know this guy shot the victim and this is the gun he used. All we want you to do is confirm what we already know so we can get a warrant to get this scumbag off the street. We will wait. How quick can you do it?*

—Investigating officers to firearms examiner, as described in Hodge, *Guarding Against Error*, AFTE JOURNAL (1988)

When an examiner reports that your client's firearm has been linked to a crime, defense counsel may have a sinking feeling about the case. As discussed earlier, firearms identification testimony has been accepted by courts since the early 20th century. A prosecutor or defense counsel may feel there's not much that can be done but accept the examiner's opinion.

In the past few years, there have been challenges to a variety of long-standing scientific disciplines. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), the U.S. Supreme Court set new standards for scientific evidence. Defense attorneys have used *Daubert* to challenge a number of long-accepted forensic techniques, including firearms identification. Attorneys, both prosecutors and defense counsel, should be aware of the concerns raised by the challengers.

There have been a few trial-level challenges to firearms identification under the *Daubert* standards. Firearms identification was challenged, and the examiner's testimony allowed, in *United States v. Moses*, a Maryland federal district court case in 2003, and in *United States v. Prochilo*, a Massachusetts federal district court case in 2002. Firearms examiners' testimony was limited to the examiner's observations of similarities and differences in *United States v. Green* and in *United States v. Monteiro*, two Massachusetts federal district court cases in 2005. The examiner in *Green* was precluded from testifying that the recovered ammunition matched a specific firearm

to the exclusion of all others. The *Monteiro* court concluded that the examiner had not followed established standards in his field and was precluded from testifying until he reexamined the evidence and properly documented his findings.

Because firearms and toolmark comparisons are similar to fingerprint comparisons (both visually match patterns and the examiner must account for distortions between the sample and the crime scene evidence), challenges often borrow from the tactics used in fingerprint cases. Some challenges are modeled after the challenge to fingerprint comparisons in *United States v. Plaza*, a Pennsylvania federal district court case from 2002. Other challenges are modeled on the FBI's report on the examiners' errors made in its erroneous fingerprint identification of Brandon Mayfield as a suspect in the Madrid bombing.

In brief, a legal challenge to a firearms expert's methodology and opinion is based on:

1. Whether firearms identification methods have been adequately tested—Are the published studies statistically valid and do they use sufficient blind and double-blind methods? Has there been sufficient testing to determine the error rate in identifications? Is there sufficient study of the statistical likelihood of coincidental matches?
2. Whether the standard used by examiners is too subjective—Examiners determine whether the comparison exceeds the best-known nonmatch agreement the examiner has ever seen in person or in published materials. This standard is both subject and built up in the examiner's "mind's eye" so that it can be difficult to explain.
3. Whether the standard used by examiners is too prone to potential problems of confirmation bias, tunnel vision, and pressures in high-profile cases—The FBI's report on the Mayfield case blamed such human factors for mistakes by three experienced FBI fingerprint examiners.
4. Whether the field has been given sufficient scrutiny by scientists outside the criminal justice community—DNA matching, for example, is used in medical care and research. Fingerprinting is used by some security systems and in identifying disaster victims. Most firearms tests are only used by law enforcement. The *Daubert* and *Plaza* courts both felt that widespread use and acceptance was useful to determining the reliability of a field.
5. Whether training, proficiency, and certification tests are sufficiently rigorous and adequately reflect the difficulties encountered with typical crime scene evidence.

6. Whether the examiner has provided sufficient information (generally photomicrographs of the purported match) to allow the judge or jury to understand the basis for the expert's opinion—If photographs are not introduced, counsel and the fact finder have to take the examiner's word for his or her results, without seeing the underlying data.

Essentially, the *Plaza* challenge is based around memory and perception. People are very good at recognizing patterns, but sometimes one sees what one expects to see, or wants to see, instead of what's really there. If, for example, an examiner tests two bullets known to be fired from consecutively manufactured handguns, he or she expects that the striae will be sufficiently different to show a nonmatch. Thus, if the examiner's results, published in a trade journal, match that preconception, then it is hard to tell whether the examiner truly tested the hypothesis. A scientist in another field would generally perform a *blind* test—the examiner deciding whether the bullet matched or not would not know where it came from. Preferably the test would be *double-blind*, which is when neither the examiner nor the person who provided the samples would know where they came from. (Double-blind testing avoids any subconscious cues passed between the person administering the test and the person taking the test.) A scientist would also test a large number of bullets from the same and from different firearms to create a statistically valid sample and eliminate random chance affecting the results.

The same basic principle applies to the individual examiner. If he or she is given information about the case to cause the examiner to expect the recovered firearm to match the crime scene evidence, then he or she may see a match that doesn't exist. That error occurred in the article quoted at the beginning of this section. The examiner was given information from the detectives suggesting a match was certain, was pressured to have a result quickly, and found the expected match. On later review, the examiner's conclusion proved to be wrong—the evidence did not match the recovered firearm. Expectations, time pressure, and pressure to support a case can all cause mistakes.

A different challenge was raised in *United States v. Kain*, a Pennsylvania federal district court case in 2004. (The case resulted in a plea bargain before the trial court ruled on the defendant's challenge.) The *Kain* challenge focused on statistical issues, specifically the percentage of coincidental matching and nonmatching striations found on firearms evidence. The challenge focused on Biasotti, *A Statistical Study of the Individual Characteristics of Fired Bullets*, 4 J. FORENSIC SCI. 34 (1959) (still regarded as one

of the most exhaustive statistical studies in the field) and Masson, *Confidence Level Variations in Firearms Identification through Computerized Technology*, 29(1) ASS'N FIREARMS & TOOL MARK EXAMINERS J. 42 (1997) (discussing similarities between suspect ammunition found in the IBIS database and false negative results on manual examinations of ammunition known to be fired from the same gun). A lawyer considering a challenge to the statistical likelihood of a random firearm with the same class characteristics as the recovered evidence having sufficiently similar individual characteristics to create a misidentification should look at the *Kain* pleadings.

So far, only three courts have limited or excluded a firearms examiner's testimony based on a *Daubert* challenge. In *Sexton v. State*, 93 S.W.3d 96, 101 (Tex. Crim. App. 2002), the Texas appellate court excluded testimony purporting to match marks on recovered cartridges caused by the lips of the magazine; no magazine was recovered. The *Sexton* holding has not been generalized to other areas of firearms identification.

In *United States v. Green*, the federal district court of Massachusetts limited the testimony of a Boston Police Department firearms examiner to describing his observations. He could not testify that the recovered evidence matched the recovered firearm to the exclusion of all others. The trial court was critical of the examiner's training, of the lack of certification for the examiner or laboratory, and the lack of proficiency testing of the examiner by a neutral testing body. The examiner did not follow the AFTE protocol and provided no notes, recorded observations, or photographs. It also held that there were no peer-reviewed publications, as *Daubert* defined that term, in the firearms identification field. The opinion was also critical of the manner in which firearms evidence is compared, comparing it to a show-up (presumptively suggestive in the eyewitness identification field) rather than a line-up, which would reduce the problems of suggestion and confirmation bias.

In *United States v. Montiero*, another decision by the federal district court of Massachusetts, the trial court criticized a conclusion by a Massachusetts State Police firearms examiner. It also criticized the examiner's training and lack of neutral proficiency testing, although it noted the examiner had taken and passed a proficiency test after making the identification in question. It also criticized the examiner's documentation and adherence to the AFTE procedures and the lack of verification by another examiner. The examiner was precluded from testifying about his opinion until he had met the AFTE standards.

Typically, judges are reluctant to reject evidence that has been accepted without question for decades, even if the lawyer presents compelling

evidence that the technique may have problems under the *Daubert* test. Even if the challenge is rejected, it may give the defense lawyer material to impeach the expert at trial or lead to a favorable settlement. The *Kain* case resulted in a favorable plea agreement. The *Prochilo* case resulted in the defendant's acquittal; a vigorous challenge can cause a jury to reject the examiner's opinion if it is not adequately supported. *Green* and *Monteiro* both resulted in limitations on examiners' testimony, which should prove beneficial at trial.

## CONCLUSION

Ballistics, or firearms identification, includes many aspects of firearms and ammunition. When a firearms expert is expected to testify in your case, take the time to learn about the firearm and ammunition involved. Know the relevant laws and terms of art. Investigate the examiner's credentials, methods, and conclusions. The investment of time will make you more comfortable with the evidence and help you represent your client more effectively.

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**EXHIBIT “L”**

The New York Times

## Archives

### In Many Cities, New Bullets Have Not Brought Complaints

By KIT R. ROANE  
Published: July 09, 1998

The decision by the New York City Police Department to issue hollow-point bullets to its officers has generated debate, but the ammunition has been standard issue in many other metropolitan police departments for years and have generated few, if any, complaints, law enforcement officials in those cities say.

Besides Federal law enforcement agencies, including the Federal Bureau of Investigation and the United States Marshals Service, at least 19 police departments in large cities across the country either issue or allow officers to use hollow-point ammunition. The bullets are relatively slow-moving projectiles that expand quickly on impact. By comparison, the fully jacketed ammunition that is standard in most military forces and is still used by some police departments often travels at a greater speed and does not readily break apart when it hits a target.

The San Francisco Police Department began issuing hollow-point ammunition about a decade ago in the hope that the bullets would have greater stopping power, said Sgt. Michael J. Griffin, the department's range-master. All San Francisco officers now use a .40-caliber subsonic hollow-point bullet, he said.

"Fully jacketed ball ammunition is designed to produce wounds, not necessarily incapacitate a person immediately," Sergeant Griffin said. "The idea in a war situation is that the wounded will tie up more support personnel than the dead. But the issue in law enforcement is survival. You want to stop an attacker as quickly as possible."

For those reasons, he said, hollow-point bullets "have become pretty standard in law enforcement."

While the hollow-point bullets are deadlier, law enforcement officials said that the ammunition's slower velocity and its ability to collapse make it less likely to travel through walls or ricochet off hard surfaces, thereby reducing the risk of injury or death to bystanders.

Sergeant Griffin added that the greater stopping power of the bullets has also allowed police officers in San Francisco to fire fewer rounds during violent confrontations. "We train to fire two or three shots at a minimum and on average we now see about three rounds fired per incident," he said. "Before it was closer to four or five."

Dennis Tanabe, a firearms technician with the Honolulu Police Department, said violent movies and television shows had generated what he said were needless concerns about hollow-point bullets.

"Critics usually don't understand the dynamics of a bullet and go by the prejudices of Hollywood when looking at this one," he said. "They make it out to be a magic bullet, like it tears people's arms off."

Critics have worried that a hollow-point bullet could be much more deadly to bystanders. They have also criticized use of the ammunition because of the damage it does to a body when it strikes, calling it "cruel and unusual punishment," said Aaron Rosenthal, a retired assistant chief in the New York City Police Department. But Mr. Rosenthal said that, in general, officers are sufficiently trained to hit their targets and avoid accidentally hitting bystanders.

"You are not taught to fire at arms and legs because that's a way to get you to an inspector's funeral," he said. "The idea is to stop the combatant as quickly as possible and it is assumed that, with the training an officer receives, he will be successful and not hit anything else."

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**EXHIBIT “M”**

# More Powerful Ammo Studied By D.C. Police

POLICE, From A1

out about this," he said in a telephone interview yesterday.

DiMaio, expressing agreement with some D.C. police officials and police union leaders, drew a sharp distinction between hollow-point bullets and dumdums. Dumdums, he said, are soft-pointed bullets, fired at a high velocity from a rifle. Dumdums tear through a victim's body, he noted, usually causing a severe wound.

The hollow-point bullets used by many police departments, DiMaio said, are fired from a pistol at a lower velocity. The wound caused by these hollow-point bullets, DiMaio added, does not differ from that caused by a round-nose bullet. "They look exactly the same," he said.

Hollow-points do, however, resemble dumdums to the extent that both usually have heads that expand on impact with their target.

Dum dum bullets are named for a town near Calcutta, India, where they were first produced during the 19th century. Because of the ugly wound caused by dumdums, the use of expanding bullets was forbidden in international conflict by the second Hague conference, in 1899, in a declaration to which the United States did not subscribe. State Department officials have said in recent years, however, that the U.S. armed forces do not use expanding bullets because of a subsequent Hague convention to which the U.S. is a party.

Hollow-point bullets are now used by the Federal Bureau of Investigation, as well as other federal police agencies. An FBI spokesman noted yesterday that FBI agents carry weapons only for self-defense and said the bureau uses hollow-point bullets mainly because "you can neutralize the individual with a minimum number of shots."

In recent years, suburban Washington police departments, including those in Prince George's, Montgomery and Fairfax counties, have joined the

growing national trend to use of various forms of expanding bullets.

Advocates of the use of hollow-point bullets by city police departments argue that the bullets offer several advantages in addition to greater effectiveness in stopping a criminal from returning a police officer's gunfire. The hollow-point bullets are said to be less likely than round-nose bullets to ricochet. They are also described as less likely to travel through an intended victim's body and then strike an innocent bystander.

Use of hollow-tip bullets was considered here, however, by former D.C. Police Chief Jerry V. Wilson, who re-

jected them after a study was made. A D.C. police ballistics specialist said in 1972, when suburban county police departments were shifting to expanding-head bullets, that the city police would not change to hollow-points because of fears of a public controversy.

D.C. Police Chief Cullinane said yesterday that he would make no decision on whether to switch to hollow-point bullets until he has examined an extensive study of the issue now under way by his department. Deputy Chief Bernard D. Crooke, who is in charge of the study, said it would be complete in about 10 days.

Cullinane repeatedly stressed his concern over what he described as "public acceptance" of any change in police ammunition and his worries about apparent confusion between

hollow-point and dum dum bullets. "A hollow-point has totally nothing to do with a dum dum," he remarked.

"The men in the department are concerned about this. I'm concerned about their safety and I'm concerned about the ammunition," Cullinane added. Officials of Local 442 of the International Brotherhood of Police Officers, which represents city police, said yesterday that they have long pressed for use of hollow-point bullets here.

D.C. City Council member Willie J. Hardy, whose Council committee reviews police matters, said yesterday that she is aware of discussion of a possible change in police ammunition but has not decided whether to support such a move.

**EXHIBIT “N”**

Saturday, November 27, 1976

The Washington Star

# District Police Moving To Get Bullets With More Stopping Action

By Earl Byrd  
and Zofia Smardz

Bullets were flying about the heads of customers, D.C. police, and a 35-year-old neighborhood loner named Thomas-Lewis who had just stabbed to death a security guard at the Peoples Drugstore in the Southeast Naylor Road Shopping Center.

No one knew why Lewis had stabbed the guard, a 21-year-old former Army man, but now, armed with the dead man's revolver, he crouched between cars in the shopping center's parking lot.

Police converging on the parking lot began firing with their .38-caliber revolvers. Lewis was struck by at least four of the 158-grain, round nose, police bullets. Blood poured from the four wounds but the 145-pound Lewis could not be stopped.

And, as a mother lay with her baby in the roadway, bullets ricocheting about her head, Lewis got up and started a slow walk (with police crouching and following) toward a clump of bushes 200 yards away.

IT WAS ALMOST noon on a cold Monday morning in September.

Lewis, blood streaming from his body, a .38-caliber revolver swinging slowly by his right leg, started toward his nearby apartment at 1814 29th St. SE, where he had lived for five years.

Officer James T. Nelson waited near the bushes — he must have told Lewis to halt because we heard more shots and then Nelson was hit," recalls Bob Morton of Skyland Liquors next door to the drugstore.

"When Lewis shot Nelson, police closed in and shot him a couple more times. . . . This time they stopped him."

Nelson underwent three hours of surgery and was reported in satisfactory condition the following day.

Dr. James Luke, the D.C. medical examiner, said Lewis had died of multiple (six) bullet wounds.

"It's ridiculous that police have to shoot a man six times to stop him," Morton said. "What about the mother with her baby? And that policeman (Nelson) never should have been shot — Lewis should have never made it that far."

"Yea," said a friend, "but we don't want police to have bullets so powerful that they take your leg or arm off."

"True," Morton said, "but something's got to be done."

YESTERDAY, D.C. police announced that something was going to be done about the type of bullets they use, beginning with educating the community of the dangers and differences between the streamlined bullet they use today and the hollow head bullet Chief of Police Maurice J. Cullinane would like to see his officers use.

Wednesday Cullinane began his education process by showing a film to his Citizens Advisory Council. The film explored the hazards of the 158-

grain streamlined round nose lead bullet, which the department uses, as compared to the 158-grain hollow point lead bullet.

Of the 10 members present, nine voted to use the hollow point and one member abstained, electing to show the film to members of his community before casting an official of yes.

"The real differences between the two bullets," public information officer Gary Hankins explained, "is that the bullet we're using now can hurt innocent bystanders. It doesn't stop a man effectively and can go right through him and hit somebody else. And one of the worst things about the streamlined bullet is that it ricochets so badly."

"The hollow-point (which is not a dum-dum bullet like that fired from a high-powered rifle) . . . is designed to have greater impact upon contact and therefore more stopping power," Hankins said, adding that if the bullet hit a wall it would flatten itself out and decrease the possibility of ricocheting.

THE HOLLOW POINT became available in the early 1960s.

It already has been adopted locally.

The Prince Georges County Police Department switched from a round-head lead bullet to the "123 grain hollow-point," Lt. Robert Howard of the Prince Georges police said yesterday.

Several other departments have also switched. And in those which haven't, like Montgomery County, officers complain.

Chief Cullinane refuses to adopt the hollow-point without community approval.

The chief's Citizens Advisory Council will inform the neighborhood advisory councils and Cullinane has appointed two officers from Planning and Development to tour the city with videotape presentations for citizens and the business community.

Any citizens-group which would like to view the videotape and ask questions about the hollow-point can set up a viewing date by calling the D.C. police information office on 826-2801.

Although police would like to change over to the hollow-point bullet, the chief of police would like to have responsible opinions from the community.

**EXHIBIT “O”**

## **REPORT OF THE COMMITTEE ON HOLLOW-POINT BULLETS PRESENTED TO THE CIVILIAN COMPLAINT REVIEW BOARD ON JULY 8, 1998**

On March 3, 1997, Police Commissioner Howard Safir announced that the New York City Police Department intended to employ hollow-point bullets in place of full metal jacket bullets. The Commissioner announced that this would result in a standardization of bullets used by members of the service since, for several years, members of the Transit and Housing Police Departments had used hollow-points. The Commissioner and his top commanders further stated that the reason for the change at Transit and Housing had been to keep the problem of ricochet bullets and pass-through bullets to a minimum. Ricochet bullets were particularly problematic in the steel and concrete environments of housing project halls and subway stations. Pass-through bullets were particularly problematic in crowded urban situations.

Many members of the public expressed concern, both in print, on television and radio, and in the public comment portions of our public meetings that hollow-point bullets demonstrated the dangerous propensities of so-called "dum-dum" bullets; there were also several expressed concerns about excessive rotation, large exit wounds and explosive internal damage. Serious questions were raised about the propriety of such bullets in an urban environment. Concerns were raised both with respect to officers, in effect, acting as judge, jury and executioner on the one hand and with respect to officers being the possible victims of friendly fire fatalities on the other. After extensive debate a formal vote of the Board was held and a committee was established on March 12, 1997, to examine these concerns and to report our views to the full board for its consideration.

The Committee consisted of Commissioners Condon, Livingston and Kuntz, with Chairman Barkan as an ex officio participating member. The first order of business of the Committee was to examine publicly available literature concerning hollow-point bullets. After examining the extensive literature, a copy of which is appended to this report, the members of the Committee met at the New York City Police Academy Training Facility on July 8, 1997, with firearms experts from the New York City Police Department. In the course of that meeting the Committee examined full metal jacket bullets both before and after they had been fired. We also examined hollow-point bullets both before and after they had been fired. The firearms experts provided us with a map listing all the jurisdictions in which hollow-point bullets were currently in use in the United States of America, as well as other information pertaining to the Department's desire to effect uniform use of hollow-point bullets for all its members.

The Committee then arranged to actually load, discharge and retrieve hollow point and full metal bullets at the New York City Police firing range in the Rodman's Neck section of the Bronx. We spent the better part of a day at the firing range. Each member of the Committee fired both full metal and hollow point bullets. Each member of the Committee reviewed the post firing bullets. The Committee brought with it to the range a commercially produced gelatin identified by the Federal Bureau of Investigation reports as approximating the density of human bone, flesh and tissue. We observed the firearms experts discharge both full metal and hollow-point bullets into the gelatin we provided. The Committee and the firearms experts then jointly examined the bullets in the gelatin, observing their path, how they did or did not fragment, and how far they traveled.

### CONCLUSION

The Committee unanimously concluded as follows:

First, the selection of appropriate ordnance to protect the members of the public and the members of the New York City Police Department is among the most significant responsibilities a Police Commissioner faces. The decision must be made in a thoughtful, deliberate manner which balances the risks and rewards in what is truly a life and death choice for all concerned.

Second, the Committee, while by no means expert in the area of firearms discharge, did come to appreciate the seriousness of the decision and the seriousness of purpose and consideration of the various factors the Police Department and its experts demonstrated in making their decisions in this area.

Third, the Committee unanimously concludes that the decision to move from full metal jackets to hollow-points is consistent with modern, enlightened law enforcement judgments in a wide number of jurisdictions - both state and federal-and is a reasonable exercise of the Department's rights and responsibilities in this arena. The problem of ricochets and pass-throughs is a significant one: there is no question that lives are always at risk when bullets are discharged. The issue is how to minimize damage.

Fourth, the Committee can state from its own observations that hollow-points are neither exploding dum-dums nor fragmenting bullets. With one exception the hollow-points we discharged and those we observed being discharged flattened slightly. The one exception was a hollow-point which hit a frozen bit of the gelatin: it did not explode, but left minor fragments near the path of the bullet. In every instance we observed, the hollow

point bullet penetrated the gelatin substance far less extensively than the full metal jacket. Thus, the Department's assessment that full metal jacket bullets present a great risk of pass through and ricochet dangers is consistent with our observations.

Fifth, the Committee unanimously commends both the Police Department and the Public for the serious and somber discussion of this issue. In assessing the risks and rewards of ordnance selection, the Committee has attempted to discharge its duties with the care and attention this important matter deserves.

Respectfully submitted,

Richard Condon  
William F. Kuntz, II  
Deborah Livingston  
Mel Barkan, Chairman

**EXHIBIT “P”**

## ARKANSAS STATE GAME AND FISH COMMISSION

## CODE BOOK

The regulations in this Code Book are hereby adopted by the Arkansas State Game and Fish Commission under authority of Amendment 35 to the Constitution of the State of Arkansas. All laws, rules, regulations or orders in conflict with the regulations in this Code Book are hereby repealed by the Arkansas State Game and Fish Commission.

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**06.01 CERTAIN KILLING DEVICES AND AMMUNITION PROHIBITED FOR HUNTING CROW, RABBIT AND SQUIRREL**

03-09 It is unlawful to hunt crow, rabbit or squirrel by use of:

- (A) Rifled slugs or shot larger than No. T shot;
- (B) Rifles or pistols larger than .22 caliber rimfire;
- (C) Muzzleloading firearms larger than .40 caliber;
- (D) Traps.

**EXCEPTIONS:**

- (1) Rabbit and squirrel may be taken with muzzleloading firearms larger than .40 caliber during open muzzleloader bear and deer seasons.
- (2) Crow may be taken during open coyote and gun deer seasons with firearms legal for those seasons (Code 05.01 and Addendum A1.07).
- (3) Rabbits may be taken during open rabbit season with box traps having interior dimensions not larger than 8 inches in width and 10 inches in height, and no more than eight traps per individual.

**PENALTY: Class 1**

**06.02 CERTAIN FIREARMS AND AMMUNITION PROHIBITED DURING MODERN GUN DEER SEASONS**

03-06 (A) It is unlawful to hunt deer during statewide modern gun deer seasons with:

- Prohibited muzzleloading firearms (Code 06.03);
- Any .410 shotguns using ammunition other than slugs;
- Any shotguns using shot smaller than No. 4 buckshot;
- Handguns having barrels shorter than 4 inches using conventional straight-wall cased handgun calibers less than .357 caliber or bottleneck-case handgun calibers less than .22 caliber;
- Rifles and handguns using rimfire cartridges, military or full-metal jacket ammunition;
- Any centerfire rifle or handgun smaller than .22 caliber.

(B) It also is unlawful for any person to hunt deer during modern gun deer seasons in Deer Zones 4, 4B, 5, 5B with any firearms other than the following:

- Shotguns (.410 or larger) with slugs only;
- Legal muzzleloading long guns (Code 06.03);

- Handguns having barrels between 4 and 10 inches in length and chambered specifically for straight-wall centerfire cartridge cases and hunting with lead and, lead alloy, soft-nose and/or hollow-point bullets no less than .30 caliber.

**EXCEPTION:**

In compliance with Code 05.19.

**PENALTY: Class 1**

**06.03**

04-12

**CERTAIN FIREARMS PROHIBITED DURING MUZZLELOADING SEASONS**

It is unlawful to hunt deer or bear during the muzzleloading deer or bear seasons with or to possess:

- (A) Firearms capable of being loaded by means other than through the muzzle or of firing centerfire or rimfire ammunition;
- (B) Muzzleloading firearms firing more than one projectile per barrel or chamber (buckshot prohibited);
- (C) Muzzleloading long guns smaller than .40 caliber or with barrels shorter than 18 inches in length;
- (D) Muzzleloading handguns with barrels less than 9 inches in length, of smaller than .45 caliber, and loaded with a projectile weighing less than 200 grains (.45 caliber or larger conical bullets, or .530 and larger round balls).

**EXCEPTIONS:**

- (1) Any caliber muzzleloading handgun or (cap and ball) percussion revolver is permitted to be carried when a legal muzzleloading long gun is in hunter's immediate possession.
- (2) In compliance with Code 05.19.
- (3) Hunters of a deer camp enrolled in the Deer Management Assistance Program who has been issued an Unrestricted Weapon Doe Permit or Management Buck Permit may hunt deer in compliance with the terms of the permit.

**PENALTY: Class 1**

**06.04**

04-12

**ARCHERY TACKLE RESTRICTIONS**

It is unlawful to hunt wildlife with any of the following archery tackle:

- A long or compound bow with a draw weight of less than 40 pounds;
- A crossbow without a functional mechanical safety device or with a draw weight of less than 125 pounds;
- Arrows with an arrowhead width of less than 7/8 inch when open; or,
- Arrows or arrowheads containing poisons or chemicals.

**EXCEPTION:**

Small game may be hunted using arrowheads less than 7/8 inch in width.

**PENALTY: Class 1**

**06.05**

04-12

**FIREARMS PROHIBITED WHILE ARCHERY OR CROSSBOW HUNTING**

It is unlawful to have a firearm in one's immediate possession while hunting bear, deer or turkey with archery tackle.

**EXCEPTIONS:**

- (1) Legal firearms when and where a firearms bear or deer season is open.
- (2) In compliance with Code 05.19.

**EXHIBIT “Q”**

# NEW JERSEY ADMINISTRATIVE CODE

**THIS FILE INCLUDES ALL REGULATIONS PUBLISHED THROUGH  
NEW JERSEY REGISTER, VOL. 44, NO. 5, MARCH 5, 2012**

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### § 7:25-5.23 Firearms and missiles, etc.

(a) Except when legally engaged in deer or black bear hunting during the prescribed firearm seasons, respectively, no person shall have in his or her possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than No. 4 fine shot. This shall not apply to persons properly licensed and permitted for hunting during the special eastern coyote, red fox and gray fox hunting season, exclusively, who may use fine shot no smaller than #4 (.13 inches in diameter) or larger than #T (.20 inches in diameter). This shall not preclude farmers or their agents from using shot not larger than No. 4 buckshot to control woodchuck causing damage or a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. For hunting woodchuck, center-fire rifles of .25 caliber or smaller or rim-fire rifles may be used. Center-fire rifles larger than .25 caliber may also be used provided that the bullets used do not exceed 100 grains in weight. All center-fire rifle ammunition used in hunting woodchucks must be hollow point, soft point or expanding lead core bullets. All rim-fire rifle ammunition used in hunting woodchuck must be hollow point or soft point type. Also excepted is the use of a muzzleloading rifle, .36 caliber or smaller, loaded with a single projectile during the prescribed portion of the squirrel season in designated areas. Waterfowl hunters may possess and use shotgun shells loaded with T (.200") steel fine shot or smaller or other non-toxic shot authorized by Federal regulations no larger than T (.200") shot and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and raccoon, or opossum or legally trapped furbearing animals other than muskrat. Notwithstanding the foregoing, this subsection shall not preclude agents and/or permittees operating under an approved Special Deer Management Permit (N.J.A.C. 7:25-5.32) from shooting deer with a rifle or a rifle equipped with a silencer or suppressor if that permit so specifically provides. Rifles for this purpose shall be restricted as specifically provided in that permit to include only .22, .223, .270 and .45 caliber or other calibers approved by the Division. Only highly frangible bullets shall be employed in .223 and .270 caliber rifles. Bullets employed in .22 and .45 caliber rifles shall be restricted to those designed to provide maximum expansion and limited penetration. As a part of a Special Deer Management Permit, use of .22 rim-fire ammunition is restricted to euthanasia of captive deer only.

(b) All persons in possession of a rifle while hunting or trapping must have in addition to their proper license, a valid and proper rifle permit.

(c) Except as may be permitted for waterfowl hunting in accordance with Federal regulations and as provided for agents and/or permittees operating under an approved Special Deer Management Permit (N.J.A.C. 7:25-5.32), no person shall use in hunting fowl or animals of any kind, any shotgun capable of holding more than three shells at one time or that may be fired more than three times without reloading. Except as provided for agents and/or

permittees operating under an approved Special Deer Management Permit (N.J.A.C. 7:25-5.32), no person shall use in hunting or trapping of any kind, a rifle loaded with more than three cartridges. No person shall have in his or her possession while deer hunting on Monmouth Battlefield State Park any shell or cartridge with missiles of any kind other than shotgun slugs or No. 4 or No. 000 buckshot.

(d) It shall be legal to use a .22 caliber rifle and .22 caliber short cartridge only for hunting raccoon and opossum with hounds and for killing legally trapped animals other than muskrats on State wildlife management areas.

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren, Morris and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with Rt. 511; then south along Rt. 511 to its intersection with Rt. 46; then west along Rt. 46 to its intersection with Rt. 80; then west along Rt. 80 to its intersection with Rt. 15; then north along Rt. 15 to its intersection with the Morris-Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their current firearm hunting license may hunt for squirrels between the last Saturday in September and the Friday following the first Monday in November, inclusive; and between the first Saturday in January and the third Monday in February, inclusive, using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial

preserves, trappers, woodchuck hunters, raccoon and opossum hunters, muzzleloader deer hunters, muzzleloader squirrel hunters, and muzzleloader bear hunters, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing in this subsection shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer and black bear hunting only. Persons hunting black bear shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with lead, lead alloy or copper slug only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead, lead alloy or copper slug only; or, a shotgun not smaller than 20 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession while deer hunting any firearm missile except the 20, 16, 12 or 10 gauge lead, lead alloy or copper slug; or, if hunting deer the 12, 10, 16 or 20 gauge buckshot shell. Shotgun shells containing a single spherical projectile may not be possessed or used in deer or black bear hunting. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license or a person legally engaged in hunting woodcock from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than T (.200 inch) steel shot or other bismuth non-toxic shot authorized by Federal regulations during the shotgun deer seasons). A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his or her trap line. Farmers or their agents may use shot not larger than No. 4 buckshot to control woodchuck causing damage.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the six day firearm deer season and the permit muzzleloader rifle deer season. Persons who are properly licensed may hunt for black bear with a muzzleloader rifle during a prescribed black bear season. Muzzleloader rifles used for hunting deer or black bear are restricted to single-shot single barreled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. Only one muzzleloader rifle may be possessed while hunting. Double barrel and other types of muzzleloader rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited. Persons who are properly licensed may hunt for deer with a single-shot, single barreled, flintlock or percussion action, smoothbore muzzleloader during the permit muzzleloader rifle season. Single shot, smoothbore muzzleloaders used during the permit muzzleloader season shall fire a single missile or projectile and shall not be smaller than 20 gauge or larger than 10 gauge. Double barrel and other types of smoothbore muzzleloaders capable of firing more than one shot without reloading or holding more than one charge are prohibited during the permit muzzleloader season. Persons who are properly licensed may hunt deer with double barrel, smoothbore muzzleloader during the six day firearm and permit shotgun deer seasons. Smoothbore muzzleloaders used for deer hunting during the six day firearm and permit shotgun deer seasons shall not be smaller than 20 gauge or larger than 10 gauge, and shall fire a single missile or projectile, or buckshot no smaller than No. 4 (.24 inch) or larger than 000 (.36 inch). Only one muzzleloader rifle or smoothbore muzzleloader may be possessed while deer hunting.

2. Properly licensed persons 10 years of age and older engaged in hunting with a

muzzleloader rifle must have in possession a proper and valid rifle permit. Properly licensed persons 10 years of age or older, hunting during the muzzleloader rifle permit deer season with a smoothbore muzzleloader, must also have in possession a proper and valid rifle permit. Rifle permits for 10 to 17 year olds will be valid for muzzleloader deer hunting, muzzleloader squirrel hunting, muzzleloader woodchuck hunting and muzzleloader bear hunting.

3. A muzzleloader is considered unloaded when, in the case of a percussion cap rifle or shotgun, the percussion cap has been removed from the nipple; in the case of a flintlock, when the powder is removed from the pan and a boot or cover made of a nonmetallic material is placed over the frizzen.

4. Only black powder or black powder equivalents, including Clean Shot, GOEX Clear Shot and Pyrodex, may be used with a muzzleloading firearm when engaged in hunting any game species during the prescribed seasons enumerated within the current Game Code. Modern smokeless powder is strictly prohibited while hunting game with a muzzleloading firearm.

5. Whenever a firearm is in a motor vehicle, in addition to the requirements found in N.J.A.C. 7:25-5.23(f)4 (unloaded), it shall be enclosed in a securely fastened case.

(g) No person shall hunt, hunt for, or attempt to capture, kill, take, injure or destroy game birds or animals except at the time and in the manner provided by N.J.S.A. Title 23 and the valid State Game Code and any regulation required for a special permit deer hunt.

(h) Wild waterfowl, migratory game birds, rabbits, hares, jack rabbits, squirrels, grouse, chukar partridge, pheasants, and quail shall not be hunted for or taken on Sunday. However, pheasants, quail and chukar partridge may be hunted for or taken on Sunday on semi-wild and commercial shooting preserve lands that are properly licensed for the taking thereof.

(i) Except for conservation officers and their deputies, no person shall carry or possess a bow and arrow, firearm of any kind or any instrument capable of firing or throwing a projectile of any type within the limits of a state game refuge unless authorized by the Division.

(j) Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof, or on Wildlife Management Areas or private property during prescribed seasons.

(k) No person shall, for the purpose of hunting for, pursuing, taking or killing, or attempting to hunt, pursue, take or kill any bird or animal, have in an automobile or vehicle of any kind, any firearm loaded with missiles of any kind, under a penalty of not less than \$ 20.00 nor more than \$ 50.00.

(l) The Division may issue special permits without fee, to shoot or hunt from a standing vehicle that is parked off the road to licensed hunters who have demonstrated in writing the nature of their disability and the need for an exemption. The applicant shall provide medical documentation on the form(s) provided by the Division, which must be certified by a

physician licensed to practice medicine. Permittees are subject to all applicable New Jersey Fish and Wildlife laws and regulations. Violation of any Fish and Wildlife law or regulation may result in the revocation of any special permit issued by the Division.

1. Individuals hunting with a permit to hunt or shoot from a motor vehicle shall mark the vehicle being used for the purpose of hunting in one of the following ways: The vehicle shall display handicapped license plates issued by the New Jersey Division of Motor Vehicles or display a sign, provided by the Division, in the rear window of the vehicle being utilized.

2. Permits issued to individuals under this subsection and under (o) below may be revoked by the Division when the applicant is found to have made false statements on their application or the applicant had been convicted of any violation of Fish and Wildlife laws and regulations.

(m) No person shall have both a firearm and a bow and arrow in his or her possession or under his or her control in the woods or fields or on the water while hunting any wild bird or mammal. This does not preclude a person from carrying both a firearm and bow and arrow in a motor vehicle. This does not apply to duly constituted law enforcement officers.

(n) No person shall hunt with the aid of a deer decoy, except during the fall bow, special permit bow and winter bow seasons. Any person while carrying or moving deer decoys in the woods and fields for the purpose of hunting shall wear a cap of fluorescent hunters orange or some other garment containing at least 200 square inches of fluorescent orange material which shall be visible from all sides. No person shall hunt for deer with the aid of an electronic calling device, or any device which projects a beam of light upon the target. A hunter engaged in firearm hunting for deer and utilizing a ground blind must display 200 square inches of hunter orange atop the blind and visible from all sides, or within five feet outside of the blind and higher than the blind or at least three feet off the ground, whichever is higher. A "ground blind" is defined as a temporary man-made structure used for the purpose of concealing from sight a person who is hunting. A ground blind is not a naturally occurring feature that a hunter merely uses for concealment.

(o) Physically challenged persons whose need for alternative methods of taking game animals can not be addressed by the provisions of (l) above and N.J.A.C. 7:25-5.24(e) may apply to the Director of the Division of Fish and Wildlife for further exemption from the existing regulations concerning methods of taking wildlife including alternative equipment on forms provided by the Division. Applicants must demonstrate in writing the nature of the disability and the need for an exemption and must provide medical documentation on the form(s) provided by the Division, which must be certified by a physician licensed to practice medicine. The Division will review each request submitted under (l) above, this subsection, and N.J.A.C. 7:25-5.24(e) and may determine the need to schedule interviews with the applicants and/or their physician to verify the circumstances and determine the specific requirements of each applicant, and assess the ability of each applicant to safely and effectively use alternative equipment or methods. Additional medical information and/or evaluation may be required if deemed necessary by the Division in order to make a determination of the validity of the application. The cost of the additional medical testing is

the responsibility of the applicant. Each permit shall designate the specific alternative methods to take wildlife, including equipment permitted and the term of the permit for each individual determined to be qualified. All handicapped permit applications will be accepted during the period of January 1 to August 31 of each year. Within 60 calendar days from the denial of any application by the Division, the applicant may appeal to the Fish and Game Council. Any further right of appeal shall be determined and handled in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Such disputes will be referred to the Office of Administrative Law for hearing.

(p) No person shall carry or possess a shotgun and any shotgun slug in the woods and fields or on the water while hunting unless he or she has in possession a shotgun which has adjustable open iron or peep sights or a scope affixed. No person shall use any shotgun containing shotgun slugs for the purpose of hunting unless it has adjustable open iron or peep sights or a scope affixed.

(q) Persons required by law to wear corrective lenses to operate a motor vehicle shall wear corrective lenses when hunting with a bow or a firearm of any kind.

(r) Nothing in this subchapter shall be construed to prevent the Director of the New Jersey Division of Fish and Wildlife from authorizing personnel or agents of the New Jersey Division of Fish and Wildlife from possessing, carrying or using hand held pistol-like devices which launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance wildlife; or from possessing, carrying or using animal immobilization rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals or from possessing, carrying or using rifles or shotguns, upon completion of approved training course, in order to dispatch sick, injured, or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife. All such duly authorized personnel of the New Jersey Division of Fish and Wildlife, except Conservation Officers, shall possess a firearms purchaser card, a valid New Jersey hunting license and a rifle permit issued by the New Jersey Division of Fish and Wildlife.

(s) Nothing in this subchapter shall be construed to prevent duly authorized personnel or agents of the New Jersey Division of Fish and Wildlife from the possession and use of any other Division approved device or equipment for the capture, marking or killing of wildlife for scientific, enforcement or public safety purposes. This section applies to all non-domestic animals whether native or exotic, irrespective to season status, or other restrictions in any statute or rule.

(t) Nothing in this subchapter shall be construed to prevent duly authorized personnel or agents of the New Jersey Division of Fish and Wildlife from possessing, carrying or using any device which projects, releases or emits any substance specified as being non-injurious to black bears or other animals by the State Director of Animal Health and which produces temporary physical discomfort though being vaporized or otherwise dispensed in the air for the purpose of repelling animal attacks or for the aversive conditioning of nuisance wildlife.

(u) Notwithstanding the foregoing, this section shall not preclude the Director from authorizing, on a case by case basis, Federal Government employees operating under a State of New Jersey Depredation Control Permit, Special Wildlife Management Permit and/or a Federal Fish and Wildlife permit that is co-signed by the New Jersey Division of Fish and Wildlife, to shoot wildlife specifically listed on that permit with an air rifle or a rifle when that permit specifically authorizes the use of air rifles and/or rifles. Air rifles used for this purpose shall be restricted to .22 caliber or smaller only. Rifles used for this purpose shall be restricted to .22 caliber or other calibers approved by the Division.

(v) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 13:1B-30, 23:3-1, 23:4-1, 23:4-12, 23:4-13, 23:4-16, 23:4-18, 23:4-19, 23:4-24.1, 23:4-29, 23:4-42, 23:4-44 and 23:8-10 and other applicable statutes.

#### Chapter Notes

**EXHIBIT “S”**

# **901:12 Ohio Livestock Care Standards Board**

## **Chapter 901:12-1 Euthanasia**

## **Chapter 901:12-2 Civil Penalties**

## **Chapter 901:12-3 Generally**

## **Chapter 901:12-4 Ambulatory Disabled, Non-ambulatory Disabled or Distressed Livestock**

## **Chapter 901:12-5 Veal**

## **Chapter 901:12-6 Dairy Cattle**

## **Chapter 901:12-7 Beef Cattle**

## **Chapter 901:12-8 Swine**

## **Chapter 901:12-9 Poultry Layers**

## **Chapter 901:12-10 Poultry Broilers and Breeders**

## **Chapter 901:12-11 Turkeys and Turkey Breeders**

## **Chapter 901:12-12 Sheep**

## **Chapter 901:12-13 Goats**

## **Chapter 901:12-14 Alpacas and Llamas**

## **Chapter 901:12-15 Equine Species**

# Chapter 901:12-1 Euthanasia

## **901:12-1-01 Definitions and general considerations.**

(A) Euthanasia is the causing of humane death, through the rapid loss of consciousness followed by cardiac and respiratory arrest and the ultimate loss of brain function.

(B) "Humane death" is death that results through utilization of the methods established by this chapter.

(C) The only acceptable methods of euthanasia are those listed in this chapter and are to be used as the exclusive means of euthanasia, except in slaughter facilities already governed by federal or state law.

(D) Euthanasia for animals must be performed when the likelihood for recovery is poor and the condition cannot be effectively relieved by best species management and medically appropriate procedures.

(E) Occurrence of death will be confirmed by the absence of:

(1) Breathing for five minutes;

(2) A heart beat for five minutes; and

(3) A corneal reflex (a blink reflex to touching of the eye.)

(F) If death does not occur, the same method must be repeated or another approved method of euthanasia must be immediately performed.

(G) Disposal of animals after confirmation of death must be performed in accordance with section 941.14 of the Revised Code.

(H) Mass euthanasia

For unusual conditions which require euthanasia of populations, such as wide spread disease eradication and exigent circumstances resulting from natural disasters, the director may authorize alternate methods pursuant to section 941.11 of the Revised Code. The alternate methods must minimize animal pain and suffering to the extent reasonably possible while considering the threat to human health and safety.

(I) Nothing in the rules adopted in division 901:12 of the Administrative Code shall be construed to prevent a licensed veterinarian, or other person acting under the veterinarian's supervision, from meeting the standards set forth in Chapter 4741. of the Revised Code or rules promulgated thereunder.

Effective: 01/20/2011

R.C. 119.032 review dates: 01/20/2016

Promulgated Under: 119.03

Statutory Authority: 904.03

Rule Amplifies: 904.03, 904.04

## **901:12-1-02 Inhalant agents.**

Carbon dioxide (CO<sub>2</sub>):

(A) Compressed carbon dioxide (CO<sub>2</sub>) gas in cylinders is the only allowed source of carbon dioxide.

(B) Gas concentration must be maintained for at least one minute after death.

(C) Carbon dioxide is the only chemical to be used for euthanasia of animals intended for human or animal consumption.

Effective: 01/20/2011

R.C. 119.032 review dates: 01/20/2016

Promulgated Under: 119.03

Statutory Authority: 904.03

Rule Amplifies: 904.03, 904.04

## **901:12-1-03 Injectable euthanasia agents.**

All injectable agents, including all barbiturate derivatives, must be used by or under the direct supervision of a licensed veterinarian.

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Statutory Authority: 904.03

Rule Amplifies: 904.03, 904.04

## **901:12-1-04 Physical methods.**

(A) Penetrating captive bolt

(1) Captive bolt guns are powered by gunpowder or compressed air and must provide sufficient energy to penetrate the skull of the species on which they are being used.

(2) Penetrating captive bolt shall be suitably placed so that the projectile sufficiently disrupts a cerebral hemisphere and the brain stem causing a sudden loss of consciousness and resulting in humane death.

(3) The penetrating captive bolt gun should be held firmly against the head.

(4) All manufacturer's directions regarding caliber and powerload must be followed.

(B) Nonpenetrating captive bolt

(1) The nonpenetrating captive bolt does not have a projectile and is powered by gunpowder or compressed air; and must deliver a percussive blow which produces unconsciousness.

(2) The non penetrating captive bolt gun should be held firmly against the head.

(3) Must not be used as a sole means of euthanasia, except for animals weighing equal to or less than twelve pounds and poultry.

(4) All manufacturer's directions regarding caliber and powerload must be followed.

(C) Blunt force trauma

A single decisive blow that produces immediate depression of the central nervous system and destruction of brain tissue resulting in rapid unconsciousness and humane death.

(D) Gunshot

(1) Shooting must only be performed by personnel proficient in the use of firearms and only in jurisdictions that allow for legal firearm use. Personnel, the public, and nearby animal safety and well-being must be considered; as well as control of the animal whenever feasible.

(2) Gunshot must utilize bullets of suitable caliber depending on the size of the animal to be euthanized, and that expand on impact. The projectile must enter the brain causing instant loss of consciousness and humane death.

(3) Ammunition for most animals must be a minimum caliber .22 hollow point long rifle. For large mature animals, such as cattle and swine, the minimum caliber must be .22 magnum hollow point long rifle.

(4) The gun is to be held as close as reasonably possible but not less than two inches from the head.

(E) Cervical dislocation – is the manual stretching or instrument assisted separation of the cervical vertebrae from the skull.

(F) Decapitation – is the rapid separation of the head from the neck.

(G) Electrocutation

(1) One-step electrocution – must use alternating current applied to the head and the opposite side of the body behind the heart at the flank skin fold, causing simultaneous stunning and inducing cardiac fibrillation resulting in cerebral hypoxia.

(2) Two-step stunning and electrocution – the animal is first rendered unconscious by passing an alternating current across the head and followed immediately, in less than fifteen seconds, by passing the current from the head to the opposite side of the body behind the heart.

(H) Foam – is a water based product, utilizing a specialized delivery system that produces foam of the appropriate consistency to occlude the upper respiratory tract causing hypoxia in a rapid and humane manner.

(I) Maceration – is the use of a mechanical apparatus having rotating blades or projections that cause immediate fragmentation and death.

(J) Exsanguination – As a stand alone method is limited to use for ritual slaughter pursuant to sections 945.01 and 945.02 of the Revised Code. Exsanguination may be used to ensure death subsequent to stunning or in otherwise unconscious animals.

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Promulgated Under: 119.03

Statutory Authority: 904.03

Rule Amplifies: 904.03, 904.04

## **901:12-1-05 Acceptable euthanasia methods for specific species.**

(A) Equine (horse)

(1) Acceptable euthanasia methods: penetrating captive bolt, gunshot, barbiturates.

(2) Sites for physical methods:

(a) Frontal – the gun or penetrating captive bolt is directed at a point just above the intersection of diagonal lines taken from the base of each ear to the opposite eye aiming at the spine.

[Click to view image](#)

(b) Temporal (side) – the gun is directed at a ninety degree angle to the head at a point midway between the eye and the base of the ear. [Click to view image](#) [Click to view image](#)

(B) Poultry

#### Acceptable euthanasia methods:

(1) Poultry (laying hens, turkeys, chicks, poults, and broilers) – carbon dioxide (CO<sub>2</sub>), cervical dislocation, gunshot, blunt force trauma, decapitation, nonpenetrating captive bolt, electrocution, water based foam, and barbiturates.

(2) Maceration may be used for one day old chicks and poults, and for pipped and embryonated eggs. Delivery to the macerator must occur in a way and at a rate that prevents a backlog at the point of entry into the macerator; and without causing injury, suffocation, or avoidable distress before maceration.

(3) Blunt force trauma is acceptable only for turkeys weighing greater than or equal to fifteen pounds.

(4) Gunshot for free-range poultry only.

(5) Foam is only acceptable for mass euthanasia.

#### (C) Porcine (swine)

##### (1) Acceptable euthanasia methods:

(a) Pigs weighing more than seventy pounds: penetrating captive bolt, gunshot, and barbiturates.

(b) Pigs weighing greater than twelve pounds and up to seventy pounds: penetrating captive bolt, gunshot, carbon dioxide (CO<sub>2</sub>), and barbiturates.

(c) Pigs weighing less than or equal to twelve pounds: carbon dioxide (CO<sub>2</sub>), nonpenetrating captive bolt, blunt force trauma, barbiturates.

(d) Pigs weighing equal to or greater than ten pounds: electrocution.

##### (2) Sites for the physical method:

(a) Frontal – the gun or penetrating captive bolt is directed at middle of the head and one inch above the level of the eyes aiming at the spine. [Click to view image](#)

(b) Temporal (side) – the gun is directed at a ninety degree angle to the side of the head at a point midway between the eye and the base of the ear. [Click to view image](#)

##### (3) Electrocution

(a) For one-step electrocution, a minimum of one hundred ten volts that produces a minimum of 0.5 amps for pigs weighing equal to or greater than ten pounds and up to thirty five pounds is required. For pigs weighing greater than thirty five pounds, a minimum of two hundred twenty volts that produces a minimum of 1.3 amps is required. [Click to view image](#)

(b) For two-step stunning and electrocution, the animal is first rendered unconscious by passing

an alternating current across the head and followed immediately, in less than fifteen seconds, by passing the current from the head to the opposite side of the body behind the heart.

(D) Bovine (cattle)

(1) Acceptable euthanasia methods: penetrating captive bolt, gunshot, and barbiturates.

(2) Sites for physical methods:

(a) Frontal – the gun or penetrating captive bolt is directed at the point of intersection of imaginary diagonal lines from the inside corner of the eye to the base of the opposite horn or to a point just above the opposite ear aiming at the spine.

[Click to view image](#) [Click to view image](#)

(b) Temporal (side) – the gun is directed at a ninety degree angle to the side of the head at a point midway between the eye and the base of the ear.

[Click to view image](#)

(c) Poll method – the gun is directed at a point just behind the poll aiming at the muzzle.

[Click to view image](#)

(E) Caprine (goat) and ovine (sheep)

(1) Acceptable euthanasia methods: penetrating captive bolt, gunshot, carbon dioxide (CO<sub>2</sub>), and barbiturates.

(2) Nonpenetrating captive bolt and blunt force trauma may be used on young animals less than twelve pounds.

(3) Sites for physical methods:

(a) Hornless sheep – for the poll method the gun or penetrating captive bolt is directed at the top of the head (poll) and aimed in the direction of the muzzle.

[Click to view image](#)

(b) Hornless sheep – for the frontal method the gun is directed at the middle of the forehead just above the level of the eyes and aiming at the spine. The frontal method is to be used only for the gunshot method.

[Click to view image](#)

(c) All goats and horned sheep – for the gunshot or penetrating captive bolt is directed at a point just behind the poll and aimed at the muzzle

[Click to view image](#) [Click to view image](#)

(d) Horned sheep – for the frontal method the gunshot is directed at the middle of the head just above the level of the eyes aiming at the spine.

[Click to view image](#)

(F) Alpaca and llama

(1) Acceptable euthanasia methods: penetrating captive bolt, gunshot, and barbiturates.

(2) Site for physical method – the gunshot or penetrating captive bolt is directed at the point of intersection of imaginary diagonal lines from the inside corner to the eye to the base of the opposite ear aiming at the spine. [Click to view image](#)

Effective: 01/20/2011

R.C. [119.032](#) review dates: 01/20/2016

Promulgated Under: [119.03](#)

Statutory Authority: [904.03](#)

Rule Amplifies: [904.03](#), [904.04](#)

## **901:12-1-06 Civil penalties.**

Responsible parties that violate any part of this chapter are subject to the penalties specified in rule 901:12-2 of the Administrative Code. Penalties are assessed based on the classification of the violation as major or minor as defined in rule 901:12-2-1 of the Administrative Code.

Effective: 01/20/2011

R.C. [119.032](#) review dates: 01/20/2016

Promulgated Under: [119.03](#)

Statutory Authority: [904.03](#)

Rule Amplifies: [904.03](#), [904.04](#)

**EXHIBIT “T”**



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[WACs](#) > [Title 16](#) > [Chapter 16-24](#) > [Section 16-24-040](#)

[16-24-030](#) << [16-24-040](#) >> [16-24-050](#)

## WAC 16-24-040 No agency filings affecting this section since 2003 Mechanical — Gunshot.

The slaughtering of cattle, calves, sheep, swine, goats, horses and mules by shooting with firearms and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the law.

(1) Utilization of firearms, required effect; handling.

(a) The firearms shall be employed in the delivery of a bullet or projectile into the animal in accordance with this section so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut. The animals shall be shot in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

(b) The driving of the animals to the shooting areas shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the shooting area is essential since accurate placement of the bullet is difficult in case of nervous or injured animals. Among other things, this requires that, in driving animals to the shooting areas, electrical equipment be used as little as possible and with the lowest effective voltage.

(c) Immediately after the firearm is discharged and the projectile is delivered, the animal shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.

(2) Facilities and procedure.

(a) General requirements for shooting facilities; operator.

(i) On discharge, acceptable firearms dispatch free projectiles or bullets of varying sizes and diameters through the skull and into the brain. Unconsciousness is produced immediately by a combination of physical brain destruction and changes in intracranial pressure. Caliber of firearms shall be such that when properly aimed and discharged, the projectile produces immediate unconsciousness.

(ii) To assure uniform unconsciousness with every discharge when small-bore firearms are used, it is necessary to use one of the following type projectiles: Hollow pointed bullets, frangible iron plastic composition bullets, or powdered iron missiles. When powdered iron missiles are used, the firearms shall be in close proximity with the skull of the animal when fired. Firearms must be maintained in good repair. For purposes of protecting employees, inspectors, and others, it is desirable that all firearms be equipped with safety devices to prevent injuries from accidental discharge. Aiming and discharging of firearms should be directed away from operating areas.

(iii) The provisions contained in WAC [16-24-030](#) (2)(a)(iii) with respect to the stunning area also apply to the shooting area.

(iv) The shooting operation is an exacting procedure and requires a well-trained and experienced operator. He must be able to accurately direct the projectile to produce immediate

unconsciousness. He must use the correct caliber firearm, powder charge and type of ammunition to produce the desired results.

(b) Special requirements: Choice of firearms and ammunition with respect to caliber and choice of powder charge required to produce immediate unconsciousness varies, depending on age and sex of the animal. In the case of bulls, rams, and boars, small-bore firearms may be used provided they are able to produce immediate unconsciousness of the animals. Small-bore firearms are usually effective for stunning other cattle, sheep, swine, goats, calves, horses and mules.

[Order 1067, Regulation 8, filed 9/19/67, effective 10/20/67; Order 804, Regulation 1.04, effective 3/18/60.]