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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

SAN FRANCISCO DIVISION

11

ESPANOLA JACKSON, PAUL COLVIN,) CASE NO. C09-2143 RS

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THOMAS BOYER, LARRY BARSETTI,)

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DAVID GOLDEN, NOEMI MARGARET)

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ROBINSON, NATIONAL RIFLE)

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ASSOCIATION OF AMERICA, INC. SAN)

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FRANCISCO VETERAN POLICE)

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OFFICERS ASSOCIATION,)

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DECLARATION OF CLINTON B. MONFORT IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

Hearing Date: June 9, 2011
Time: 1:30 p.m.
Place: Courtroom 3, 17th Fl.

Hon. Richard Seeborg

Plaintiffs

vs.

CITY AND COUNTY OF SAN FRANCISCO, MAYOR EDWIN LEE, in his official capacity; ACTING POLICE CHIEF JEFF GODOWN, in his official capacity, and Does 1-10,

Defendants.

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DECLARATION OF CLINTON B. MONFORT

I, Clinton B. Monfort, declare as follows:

1. I am over the age of eighteen and not a party to this action. I am the attorney licensed to practice law before all district courts in the State of California. I am an associate attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action.

2. On or about March 31, 2011, while reviewing Defendants' Reply in support of their Motion to Dismiss, our office learned that Defendants' amended its policies prohibiting the discharge of firearms within City and County limits.

3. In the time that has passed since the filing of their Supplemental Brief in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss on April 15, 2011, Plaintiffs have formed the opinion that the proper way to proceed is to file a supplemental complaint that fully and specifically addresses Plaintiffs' Second Amendment challenge to San Francisco Police Code section 4502 because the focus and specifics of this challenge differ somewhat from Plaintiffs' section 1290 challenge.

4. On or about April 26, 2011, our office contacted Sherri Sokeland Kaiser, Defendants' attorney of record, asking Defendants to stipulate to the filing of a supplemental complaint addressing Defendants' revised firearms discharge ordinances. Ms. Kaiser responded, indicating that Defendants would not stipulate because, in their opinion, Plaintiffs lack standing to bring the claim. She then stated that, should the Court find Plaintiffs have standing, Defendants might alter their position. Our office responded, suggesting to Ms. Kaiser that Plaintiffs would not file a supplemental complaint if the Court found Plaintiffs to lack standing, but would likely pursue the issue on appeal. Our office also assured her that, if Plaintiffs were found to have standing and their supplemental complaint was filed to include a challenge to section 4502, Plaintiffs would move to dismiss their challenge to section 1290. Defendants' counsel also suggested they would need to review any supplemental filings prior to determining whether Defendants would stipulate to the filing of supplemental pleadings.

5. On or about April 28, 2011 provided Defendants with a draft of Plaintiffs' Supplemental Complaint, and requested they inform our office by the close of business on

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

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

Plaintiffs

vs.

CITY AND COUNTY OF SAN)
FRANCISCO, MAYOR EDWIN LEE, in)
his official capacity; ACTING POLICE)
CHIEF JEFF GODOWN, in his official)
capacity, 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:

**DECLARATION OF CLINTON B. MONFORT IN SUPPORT OF PLAINTIFFS’
MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT**

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

Sherri Sokeland Kaiser, Deputy City Attorney
City and County of San Francisco
Office of the City Attorney
City Hall 1 Drive Carlton B. Goodlett Place
San Francisco, CA 94102 - 4682

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 3, 2011.

_____/S/_____
C. D. Michel
Attorney for Plaintiffs

EXHIBIT “A”
Case No.: 09-2143 RS

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6 Attorneys for Plaintiffs

7

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IN THE UNITED STATES DISTRICT COURT

9

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

SAN FRANCISCO DIVISION

11 ESPANOLA JACKSON, PAUL COLVIN,) CASE NO. CO9-2143 RS
THOMAS BOYER, LARRY BARSETTI,)
12 DAVID GOLDEN, NOEMI MARGARET) **PLAINTIFFS' SUPPLEMENTAL**
ROBINSON, NATIONAL RIFLE) **COMPLAINT**

13 ASSOCIATION OF AMERICA, INC. SAN)
FRANCISCO VETERAN POLICE)
14 OFFICERS ASSOCIATION,)

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Plaintiffs)

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vs.)

17)
CITY AND COUNTY OF SAN)
18 FRANCISCO, MAYOR EDWIN LEE, in)
his official capacity; ACTING POLICE)
19 CHIEF JEFF GODOWN, in his official)
capacity, and Does 1-10,)

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Defendants.)

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INTRODUCTION

1
2 1. Plaintiffs file this supplemental complaint to address recent amendments to the
3 San Francisco Police Code that occurred subsequent to the filing of Plaintiffs’ Amended
4 Complaint. Plaintiffs’ supplemental allegations challenge the validity of Defendants’ prohibition
5 on the discharge of firearms found in section 4502, subject to limited exceptions described in
6 section 4506. These sections were enacted by Defendant City and County of San Francisco and
7 are enforced by the City and County, its Mayor and its Chief of Police.

8 2. Defendants’ prohibition on the discharge of firearms, subject to limited exceptions,
9 violates Plaintiffs’ right to keep and bear arms under the Second Amendment to the United States
10 Constitution, including their right to defend themselves and others by discharging firearms within
11 the City and County of San Francisco.

GENERAL ALLEGATIONS

12
13 3. On or about August 24, 2009, Plaintiffs filed their Amended Complaint, which
14 challenged Defendants’ prohibition on the discharge of firearms contained in San Francisco Police
15 Code section 1290. Plaintiffs’ Amended Complaint alleged that section 1290 violated Plaintiffs’
16 right to keep and bear arms under the Second Amendment and, in particular, their right to defend
17 themselves and others by exercising that right within the City and County of San Francisco.

18 4. Subsequent to the filing of Plaintiffs’ Amended Complaint, Plaintiffs and
19 Defendants entered into discussions regarding potential amendments to section 1290. Plaintiffs
20 and Defendants were unable to agree to terms regarding amendments to section 1290 that would
21 redress Plaintiffs’ claims.

22 5. On or about March 15, 2011, the Board of Supervisors for Defendant City and
23 County of San Francisco passed Ordinance 50-11, File No. 101120, which amended San
24 Francisco Police Code sections 1290, 4502, and 4506.¹ The ordinance was certified as passed and
25 by the Board of Supervisors and approved by Mayor Edwin Lee on March 16, 2011.

26 6. In light of Defendant City and County of San Francisco’s passage of Ordinance No.

27 _____

28 ¹ A true and accurate copy of Ordinance NO. 50-11 amending the San Francisco Police Code is attached hereto as Exhibit “A” and incorporated herein.

1 50-11, San Francisco Police Code section 1290 no longer prohibits the discharge of firearms.

2 7. Pursuant to Ordinance 50-11, San Francisco Police Code section 4502 was
3 amended and now provides: "Subject to the exceptions in Section 4506, it shall be unlawful for
4 any person to at any time fire or discharge, or cause to be fired or discharged, any firearm or any
5 projectile weapon within the City and County of San Francisco."

6 8. Pursuant to Ordinance 50-11, San Francisco Police Code section 4506 was
7 amended, which contains exceptions to section 4502's prohibition on the discharge of any
8 firearms within the City and County of San Francisco.

9 9. Defendants' prohibition on the discharge of firearms found in section 4502 violates
10 Plaintiffs' rights to keep and bear arms guaranteed by the Second Amendment, including but not
11 limited to discharges described in paragraphs 11-16 of this Supplemental Complaint.

12 10. San Francisco Police Code section 4502 imposes a substantial burden on the right
13 to keep and bear arms for self-defense.

14 11. San Francisco Police Code section 4502 violates Plaintiffs' Second Amendment
15 rights to discharge a firearm in defense of themselves with lawfully possessed firearms, other than
16 handguns, within a personal residence.

17 12. San Francisco Police Code section 4502 violates Plaintiffs' rights to discharge
18 firearms in defense of themselves and others outside of a personal residence.

19 13. San Francisco Police Code section 4502 violates Plaintiffs' rights to discharge
20 firearms in defense of animals.

21 14. San Francisco Police Code section 4502 violates Plaintiffs' rights to discharge
22 firearms for the purposes of marksmanship or target practice.

23 15. San Francisco Police Code section 4502 violates Plaintiffs' rights to discharge
24 firearms in all circumstances protected by the Second Amendment that are not encompassed by
25 the exceptions contained in San Francisco Police Code section 4506.

26 16. Plaintiffs currently own and possess firearms other than handguns.

27 17. Plaintiffs intend to discharge firearms in circumstances protected by the Second
28 Amendment, including but not limited to firearm discharges in defense of self and others.

1 18. Plaintiffs intend to discharge firearms in self-defense, defense of others, and other
2 circumstances with any lawfully possessed firearm, regardless of whether that firearm is
3 commonly used for self-defense purposes.

4 19. Plaintiffs wish to exercise their fundamental right to keep and bear arms within the
5 City and County of San Francisco without risking criminal prosecution by violating San Francisco
6 Police Code section 4502.

7 20. To date, Defendants have failed to repeal and continue to enforce section 4502,
8 despite the United States Supreme Court's confirmation that the Second Amendment guarantees
9 the right of individuals to keep and bear arms for self-defense for other lawful purposes.

10 21. Plaintiffs presently intend to exercise their rights to defend themselves, their homes
11 and families by discharging firearms to ward off criminal attackers, dangerous animals, and to
12 practice their marksmanship and defensive shooting skills. Defendants' policy under San
13 Francisco Police Code section 4502 prevent them from doing so and otherwise criminalize the
14 exercise of Plaintiffs' Second Amendment rights.

15 22. Because Defendants have not repealed and continue to enforce San Francisco
16 Police Code sections 4502, Plaintiffs continue to face the potential for criminal prosecution by
17 exercising their rights to use a firearm, including the right to discharge a firearm in self-defense or
18 defense of others.

19 23. Because Defendants have not repealed and continue to enforce sections 4502,
20 Plaintiffs are subjected to irreparable harm in that they are unable to discharge firearms for
21 legitimate defensive purposes protected under the Second Amendment. But for San Francisco
22 Police Code section 4502, Plaintiffs would forthwith discharge firearms, including but not limited
23 to handguns, rifles, and shotguns – owned or possessed by themselves, criminal attackers, or other
24 individuals – within the City and County of San Francisco, for defensive purposes as guaranteed
25 by the Second Amendment.

26 **DECLARATORY JUDGMENT ALLEGATIONS**

27 24. There is an actual and present controversy between the parties hereto in that
28 Plaintiffs contend that Defendants' policy of prohibiting residents from discharging firearms in all

1 circumstances except those circumstances specifically authorized pursuant to San Francisco Police
2 Code section 4506 place an unnecessary and dangerous burden on Plaintiffs' rights to keep and
3 bear arms for self defense and other purposes under the Second Amendment. Defendants deny
4 these contentions. Plaintiffs desire a judicial declaration of their rights and Defendants' duties,
5 namely, that Defendants' policies under section 4502 violates Plaintiffs' Second Amendment
6 rights. Plaintiffs should not have to face criminal prosecution by Defendants for exercising their
7 Constitutional rights to keep and bear arms or, alternatively, give up those rights in order to
8 comply with the Defendants' ordinances challenged herein.

9 **INJUNCTIVE RELIEF ALLEGATIONS**

10 25. If an injunction does not issue enjoining Defendants from enforcing Sections 4502,
11 Plaintiffs will be irreparably harmed. Plaintiffs are presently and continuously injured by this law
12 insofar as it precludes them from effectively exercising their fundamental Second Amendment
13 rights to keep and bear arms. Section 4502 denies Plaintiffs the right to discharge firearms in
14 numerous circumstances protected by the Second Amendment without risking criminal
15 prosecution.

16 26. If not enjoined by this Court, Defendants will continue to enforce San Francisco
17 Police Code section 4502 in derogation of Plaintiffs' Second Amendment rights.

18 27. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages are
19 indeterminate or unascertainable and, in any event, would not fully redress any harm suffered by
20 Plaintiffs as a result of being unable to discharge a firearm in defense of self, others, or property,
21 including animals, or for purposes appurtenant thereto.

22 28. Finally, the "irreparable harm" and unascertainable "damage" that could result
23 from Defendants' ongoing violation of Plaintiffs' Constitutional rights to keep and bear arms
24 includes severe physical injury and death.

25 29. The injunctive relief sought would eliminate that irreparable harm, and allow
26 Plaintiffs to discharge firearms in accordance with their rights to do so as guaranteed by the
27 Second Amendment. Accordingly, injunctive relief is appropriate.

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SIXTH CLAIM FOR RELIEF: VALIDITY OF SFPC § 4502
Violation of the Second Amendment Right to Keep and Bear Arms

(U.S. Const., Amend.'s II and XIV)

30. Paragraphs 1- 29 are re-alleged and incorporated herein by reference.

31. Defendants' enactment and enforcement of San Francisco Police Code section 4502, which criminalizes the discharge of any firearms within the City and County of San Francisco, subject only to limited and unclear exceptions contained in section 4506, threatens to punish Plaintiffs for discharging numerous lawfully possessed firearms, both inside the home and outside the home for defensive purposes, and for other purposes protected by the Second Amendment.

32. Defendants have a history of enforcing or threatening to enforce their policy of prohibiting the discharge of firearms (formerly via section 1290 and now via section 4502). San Francisco police have advised homeowners, who have otherwise lawfully discharged firearms to thwart late-night criminal attacks, that they would be arrested for discharging firearms unless they stated the discharges were "accidental." The police further advised these homeowners that it was the City and County of San Francisco's policy to arrest anyone who discharged a firearm within the city. Defendant City and County of San Francisco's recent amendments to its discharge policy confirm Defendants' intention to enforce section 4502 against anyone, including Plaintiffs, who discharges a firearm in any circumstance protected by the Second Amendment that is not expressly exempted by San Francisco Police Code section 4506.

33. Defendants have no documents indicating that it has advised the public or its law enforcement personnel that it does not to intend enforce its new discharge prohibition contained in San Francisco Police Code section 4502, and have informed Plaintiffs that section 4502 prohibits the discharge of any firearm within a personal residence if the firearm discharged is not in common use for self-defense purposes within the home, even in lawful self-defense or defense of others. Defendants also informed Plaintiffs that section 4502 prohibits the discharge of firearms in other circumstances under which the Second Amendment protects the right to discharge a firearm, but which is not expressly excepted under San Francisco Police Code section 4506.

EXHIBIT “A”
Case No.: 09-2143 RS

Amendment of the Whole – 2/3/11

FILE NO. 101120

ORDINANCE NO.

50-11

1 [Police Code - Discharge of Fireworks; Firearms]

2
3 **Ordinance amending the San Francisco Police Code by amending Sections 1290, 4502,**
4 **and 4506 to consolidate the prohibitions on the discharge of firearms within the City**
5 **and to re-state the exceptions to those prohibitions.**

6 NOTE: Additions are *single-underline italics Times New Roman*;
7 deletions are *strike-through italics Times New Roman*.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~striketrough-normal~~.

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

10 Section 1. The San Francisco Police Code is hereby amended by amending
11 Sections 1290, 4502, and 4506, to read as follows:

12 **SEC. 1290. DISCHARGE OF FIREWORKS FIREARMS PROHIBITED—FIREWORKS.**

13 No person or persons, firm, company, corporation or association shall fire or discharge
14 any ~~firearms or~~ fireworks of any kind or description within the limits of the City and County of
15 San Francisco.

16 Provided, however, that public displays of fireworks may be given with the joint written
17 consent of the Fire Marshal and the Chief of Police.

18
19 **SEC. 4502. DISCHARGE OF FIREARMS AND FIRING OF PROJECTILE WEAPONS.**

20 Subject to the exceptions in Section 4506, it shall be unlawful for any person to at
21 any time fire or discharge, or cause to be fired or discharged, any firearm or any projectile
22 weapon ~~on or into any street, highway or other public place~~ within the City and County of San
23 Francisco.

24
25 / / /
Mayor Lee
BOARD OF SUPERVISORS

1 **SEC. 4506. FIREARMS AND PROJECTILE WEAPONS; EXCEPTIONS.**

2 (a) The provisions of Section 4502 shall not apply to or affect:

3 (1) Sheriffs sheriffs, constables, marshals, police officers, or other duly
4 appointed peace officers in the performance of their official duties, or ~~not~~ to any person
5 summoned by such officer to assist in making arrests or preserving the peace while said
6 person so summoned is actually engaged in assisting such officer;

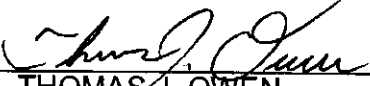
7 (2) Persons in lawful possession of a handgun who discharge said handgun in
8 necessary and lawful defense of self or others while in a personal residence; or

9 (3) Persons in lawful possession of a firearm or projectile weapon who are
10 expressly and specifically authorized by federal or state law to discharge said firearm or
11 projectile weapon under the circumstances present at the time of discharge.

12 ~~nor to persons who are by federal or state law authorized to use such firearms or projectile~~
13 ~~weapons, nor to persons using said firearms or projectile weapons in necessary self defense.~~

14 (b) Use of firearms and projectile weapons may be permissible when integral to the
15 pursuit of specific competitive and sporting events, including but not limited to events such as
16 target and skeet shooting, upon issuance of a permit from the Chief of Police to persons
17 conducting the event or engaged in the business of providing the location at which the event
18 is to take place. The Chief of Police shall formulate criteria for the application, issuance, and
19 renewal of such permits, and may require as a condition of approval the posting of any bond,
20 or proof of adequate liability insurance.

21
22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: 
25 THOMAS J. OWEN
Deputy City Attorney

Mayor Lee
BOARD OF SUPERVISORS



City and County of San Francisco
Tails
Ordinance

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

File Number: 101120

Date Passed: March 15, 2011

Ordinance amending the San Francisco Police Code by amending Sections 1290, 4502, and 4506 to consolidate the prohibitions on the discharge of firearms within the City and to re-state the exceptions to those prohibitions.

February 03, 2011 Public Safety Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

February 03, 2011 Public Safety Committee - RECOMMENDED AS AMENDED

February 15, 2011 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

March 01, 2011 Board of Supervisors - CONTINUED ON FINAL PASSAGE

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

March 08, 2011 Board of Supervisors - CONTINUED ON FINAL PASSAGE

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

March 15, 2011 Board of Supervisors - FINALLY PASSED

Ayes: 8 - Avalos, Chiu, Chu, Elsbernd, Farrell, Kim, Mar and Wiener

Excused: 3 - Campos, Cohen and Mirkarimi

File No. 101120

I hereby certify that the foregoing
Ordinance was **FINALLY PASSED** on
3/15/2011 by the Board of Supervisors of the
City and County of San Francisco.



Angela Calvillo
Clerk of the Board



Mayor Edwin Lee

3/16/11

Date Approved