

1 DENNIS J. HERRERA, State Bar #139669  
City Attorney  
2 WAYNE SNODGRASS, State Bar #148137  
CHRISTINE VAN AKEN, State Bar #241755  
3 Deputy City Attorneys  
1 Dr. Carlton B. Goodlett Place  
4 City Hall, Room 234  
San Francisco, California 94102-4682  
5 Telephone: (415) 554-4633  
Facsimile: (415) 554-4699  
6 E-Mail: christine.van.aken@sfgov.org

7 Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
8 THE MAYOR OF SAN FRANCISCO and  
THE CHIEF OF THE SAN FRANCISCO POLICE DEPARTMENT  
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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
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14 ESPANOLA JACKSON, PAUL COLVIN,  
THOMAS BOYER, LARRY BARSETTI,  
15 DAVID GOLDEN, NOEMI MARGARET  
ROBINSON, NATIONAL RIFLE  
16 ASSOCIATION OF AMERICA, INC., and  
SAN FRANCISCO VETERAN POLICE  
17 OFFICERS ASSOCIATION,

18 Plaintiffs,

19 vs.

20 CITY AND COUNTY OF SAN  
FRANCISCO, THE MAYOR OF SAN  
21 FRANCISCO, and THE CHIEF OF THE SAN  
FRANCISCO POLICE DEPARTMENT, in  
22 their official capacities,

23 Defendants.  
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Case No. C09-2143 RS

**[PROPOSED] ORDER DENYING  
PLAINTIFFS' MOTION FOR PARTIAL  
JUDGMENT ON THE PLEADINGS**

Hearing Date: July 12, 2012  
Time: 1:30 p.m.  
Place: 450 Golden Gate Ave.  
Courtroom 3 - 17th Floor  
San Francisco, CA 94102

1 After reviewing all papers filed by Plaintiffs in connection with their motion for partial  
2 judgment on the pleadings, all papers filed in opposition to Plaintiffs' motion by Defendants City and  
3 County of San Francisco, the Mayor of San Francisco, and the Chief of the San Francisco Police  
4 Department (collectively "City" or "San Francisco"), and after hearing the arguments of counsel at a  
5 hearing held on July 12, 2012, the Court finds and concludes that Plaintiffs' motion for partial  
6 judgment on the pleadings should be denied for the reasons stated herein.

7 Judgment on the pleadings is proper only when there are no issues of material fact, and the  
8 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 12(c). "All allegations of fact  
9 by the party opposing the motion are accepted as true, and are construed in the light most favorable to  
10 that party. ... [I]f the defendant raises an affirmative defense in his answer it will usually bar  
11 judgment on the pleadings." *Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day*  
12 *Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989). Plaintiffs seek a judgment that  
13 San Francisco's gun-storage ordinance (S.F. Police Code § 4512) and San Francisco's prohibition on  
14 the sale of enhanced-lethality ammunition (*id.* § 613.10(g)) violate their Second Amendment rights.  
15 Their motion cannot be granted because San Francisco has alleged facts through its legislative findings  
16 that are directly contrary to the facts Plaintiffs allege in their motion and their complaint. For purposes  
17 of this motion, the Court accepts as true San Francisco's factual determinations that requiring locked  
18 storage of guns not carried on the person does not impede the use of a handgun for self-defense and  
19 that enhanced-lethality ammunition is not necessary to defend oneself with a firearm. On these facts,  
20 there is no abridgement of Plaintiffs' Second Amendment rights.

21 Even if there were no factual issues here, the Court would deny judgment to Plaintiffs. In  
22 *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court acknowledged historic fire-  
23 safety laws that regulated the storage of gunpowder and prohibited carrying loaded guns into  
24 buildings. The Court stated, "Nothing about those fire-safety laws undermines our analysis; they do  
25 not remotely burden the right of self-defense as much as an absolute ban on handguns. Nor,  
26 correspondingly, does our analysis suggest the invalidity of laws regulating the storage of firearms to  
27 prevent accidents." *Id.* at 632. Because San Francisco's safe storage ordinance allows adult residents  
28 to carry their weapons on their persons in the home, and because San Francisco law allows the use of

1 handguns for purposes of self-defense emergencies, San Francisco's ordinance falls within the  
2 category of "laws regulating the storage of firearms to prevent accidents" identified in *Heller*. It is  
3 therefore presumptively lawful. *See Hall v. Garcia*, No. C 10-03799 RS, 2011 WL 995933, at \*2  
4 (N.D. Cal. Mar. 17, 2011) ("Where a challenged statute apparently falls into one of the categories  
5 signaled by the Supreme Court as constitutional, courts have relied on the 'presumptively lawful'  
6 language to uphold laws in relatively summary fashion.").

7 Similarly, San Francisco's ordinance prohibiting the sale of a class of bullets within San  
8 Francisco, while allowing residents to purchase in the city a wide variety of other ammunition, does  
9 not infringe Plaintiffs' Second Amendment rights in light of the City's factual finding that conventional  
10 ammunition is sufficient for residents' self-defense needs. This prohibition, too, is subject only to  
11 rational basis scrutiny. In light of San Francisco's findings that enhanced-lethality ammunition is more  
12 likely to cause greater injury and death, the ordinance easily passes muster.

13 Accordingly, IT IS ORDERED THAT Plaintiffs' motion for partial judgment on the pleadings  
14 is DENIED.

15 IT IS SO ORDERED.

16 Dated: \_\_\_\_\_

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18 HON. RICHARD SEEBORG  
19 United States District Judge  
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