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CITY OF BURLINGTON, VERMONT
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To: House Government Operations Committee
From: Burlington City Attorney's Office
Re: Safe Storage of Firearms

I. Several jurisdictions have laws addressing the safe storage of firearms that have survived legal Second Amendment challenges:

1. New York City

A. New York City requires any lawful owner or custodian of a firearm to render his or her weapon inoperable by use of a safety locking device while the weapon is out of his or her immediate possession or control. New York, N.Y., Admin. Code §§ 10-311, 10-312(a).

B. In 2012, a New York trial court upheld the City's ordinance on the basis that the law was not a complete ban on handgun possession in the home as was the case in *Heller v. District of Columbia*, the seminal case in which the United States Supreme Court held that law abiding, responsible citizens have a right to possess a handgun in the home for self-defense. Because individuals could easily and quickly enable their guns for self-defense, the court found that the ordinance did not violate the Second Amendment. *Tessler*, 952 N.Y.S. 2d 703 (2012).

2. Sunnyvale, California

A. The City of Sunnyvale, California prohibits a person from keeping a firearm in any residence owned or controlled by that person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock, when it is not carried on the person or in his or her immediate control and possession.

B. The Ninth Circuit Court of Appeals found that this ordinance did not violate the Second Amendment because it did not infringe upon law-abiding citizens' ability to defend themselves and also that the plaintiffs were not granted an injunction because they were not likely to succeed on the merits of their claim. *Fyock v. City of Sunnyvale*, 779 F.3d 991 (2015).

3. San Francisco, California

A. San Francisco prohibits any person from keeping a handgun within a residence unless the handgun is stored in a locked container or disabled with a trigger lock unless the handgun is carried on the person. S.F. Police Code § 4512(a), (c)(2). Unlike the laws of some other jurisdictions, San Francisco does not exempt a person who keeps his or her handgun within his or her immediate control from the requirements of the statute.

B. In Jackson v. City and County of San Francisco, 746 F.3d 953 (9th Cir. 2014), the Ninth Circuit Court of Appeals found that the ordinance does not violate the Second Amendment because a safely stored gun can be accessed from a safe or enabled within a few seconds, and the increased time it takes for a gun owner to access his or her gun is negligible.

C. The U.S. Supreme Court denied certiorari on the case with only Justices Thomas and Scalia dissenting.

II. Other jurisdictions also have safe storage laws that have not been legally challenged.

1. Requiring that All Firearms be Stored with a Locking Device in Place:

Massachusetts requires that all firearms be stored with a locking device in place. This requirement does not apply to any firearm “carried by or under the control of the owner or other lawfully authorized user.” M.G.L.ch140 §131L.

The District of Columbia requires that each firearm registrant should keep any firearm in his or her possession unloaded and either disassembled or secured by a trigger lock, gun safe, locked box, or other secure device, although the Code only applies penalties if minors are likely to gain access. D.C. Code Ann. § 7-2507.02.

2. States with Child Access Prevention Laws:

Fourteen states and the District of Columbia have laws that impose criminal liability on persons who negligently store firearms if minors are likely to or do gain access to the firearm. These have a variety of provisions, some requiring that the child actually have access or that the firearm is loaded, while others cover even if the child is only likely to gain access to it.

California- Cal. Penal Code §§ 25000-25225; Cal. Civ. Code § 1714.3

Connecticut- Conn. Gen. Stat §§ 29-37i, 52-571g, 53a-217a

Delaware- Del. Code Ann. tit. 11, §§ 603

District of Columbia- D.C. Code Ann. § 7-2507.02(b)-(d)

Florida- Fla. Stat. Ann. § 790.174

Hawaii- Haw. Rev. Stat. Ann. §§ 134-10.5, 707-714.5

Illinois- 430 Ill. Comp. Stat. 65/4(c); 720 Ill. Comp. Stat. 5/24-9(a)

Iowa- Iowa Code § 724.22(7)

Maryland- Md. Code Ann., Crim. Law § 4-104
Massachusetts- Mass. Gen. Laws ch. 140, § 131L
Minnesota- Minn. Stat. § 609.666
New Hampshire- N.H. Rev. Stat. Ann. § 650-C:1
New Jersey-N.J. Stat. Ann. § 2C:58-15
North Carolina- N.C. Gen. Stat. § 14-315.1
Rhode Island- R.I. Gen. Laws § 11-47-60.1
Texas- Tex. Penal Code Ann. § 46.13
Virginia- Va. Code Ann. § 18.2-56.2
Wisconsin- Wis. Stat. § 948.55

3. Requiring that Firearms be Stored with a Locking Device in Place if the Person Resides with a Prohibited Person:

The New York SAFE Act (Secure Ammunition and Firearms Enforcement Act of 2013) amending Penal Code 265.45 requires a firearm owner to keep his or her firearm locked if he or she lives with a convicted felon, a domestic abuser, or a person with a federally prohibitive mental health history.

California requires a firearm owner to keep the firearm in a locked container or secured with a locking device if he or she lives with a person prohibited under state or federal law from possessing a firearm. Cal. Penal Code, § 25100, subd (a).

4. Albany, NY

- A. In September, 2015, the City of Albany enacted an ordinance prohibiting any person who owns or is a custodian of a firearm from storing or leaving out of his or her possession and control, a firearm that is not disabled by a locking mechanism or securely locked in a safe storage depository. Albany Municipal Code § 193-6
- B. No legal challenge to that ordinance appears to have been filed.