



# A G E N D A

## REVISED

### **ABAG EXECUTIVE BOARD MEETING NO. 368**

**Thursday, July 16, 2009, 7:00 PM**

**METROCENTER AUDITORIUM**

**101 8<sup>th</sup> Street (at Oak Street)**

**Oakland, California**

For additional information, please call:  
Fred Castro, (510) 464 7913

Agenda and attachments available at:  
<http://www.abag.ca.gov/meetings/>

**1. CALL TO ORDER**

**2. PUBLIC COMMENT**

**3. ANNOUNCEMENTS**

**4. PRESIDENT'S REPORT**

**5. EXECUTIVE DIRECTOR'S REPORT\*\***

**6. CONSENT CALENDAR**

**ACTION:** Unless there is a request by a Board member to take up an item on the consent calendar separately, the calendar will be acted upon in one motion.

**A. Approval of Executive Board Summary Minutes\*\***

Summary Minutes of Meeting No. 367 held on May 21, 2009.

**B. Grant Applications\*\***

With Board consent, ABAG will transmit the attached list of federal grant applications to the State Clearinghouse. These applications were circulated in ABAG's "Intergovernmental Review Newsletter" since the last Executive Board meeting.

Please Note: The Board may act on any item on this agenda. \*\*Attachment included.



**C. Appointments to Committees**

President Jacobs Gibson requests Executive Board approval of appointments to the following committees:

**San Francisco Estuary Implementation Committee**

Nominee to be Announced at Meeting

**Regional Planning Committee**

Cheryl O'Connor, Interim CEO, Home Builders Association of Northern California (Replaces Joseph Perkins)

**D. Approval of Resolution No. 15-09 Commending Joseph Chan on Occasion of His Retirement from ABAG\*\***

Approval of Resolution No.15-09 commending Joseph Chan, former ABAG Finance Director on 26 years of outstanding service to ABAG.

**E. Authorization to Submit \$250,000 Grant Application to Metropolitan Transportation Commission by the San Francisco Bay Trail\*\***

Authorization is requested to submit a funding application request in the amount of \$250,000 to MTC under the FY 2009-2010 Bridge Toll Funds Five Percent Unrestricted State Funds category for the San Francisco Bay Trail.

**F. Authorization to Apply for U.S. Environmental Protection Agency (EPA) Climate Showcase Communities Grant\*\***

Authorization is requested to submit a proposal for up to \$500,000 in grant funding from U.S. EPA's Climate Showcase Communities Grant Program, and if awarded, for the Executive Director or designee to enter into an agreement with U.S. EPA. A 50% match is required and can be in the form of in-kind services. The grant period for awards will begin January 1, 2010, and the proposed project period may be up to three years.

**G. Authorization to Increase Contract Amount with Finger Design\*\***

On March 19, 2009, the Executive Board authorized staff to enter into a contract with Finger Design Associates in an amount not to exceed \$40,000. Due to unforeseen circumstances staff requests authorization to increase the amount by \$6,100 to cover unanticipated costs.

**7. BAY AREA GREEN BUSINESS PROGRAM CERTIFIED PUBLIC AGENCY RECOGNITION\*\***

**ACTION:** Abag Senior Planner Ceil Scandone will report on the progress of the Bay Area Green Business Program which is seeking Executive Board recognition for 25 public agencies that have been certified as "Green Businesses: in the past 16 months.

**8. SOLAR AND ENERGY EFFIECIENCY FINANCING DISTRICT\*\***

**Information:** Ezra Rapport, ABAG Deputy Executive Director, will provide an update on the proposed solar and energy efficiency financing district including program design elements; market research planning and business case development.

**9. ABAG's SUSTAINABLE COMMUNITIES STRATEGY WORK CONCEPTS\*\***

**Information:** Ezra Rapport, ABAG Deputy Executive Director, will brief the Board on ABAG's Sustainable Communities Strategy (SCS) work concepts. The SCS is a policy document required to be adopted as part of the next Regional Transportation Plan (RTP). The SCS/RTP includes land use and transportation policies and investments that address climate change, regional traffic congestion, and the reduction of carbon emissions from cars and light trucks in accordance with the regional targets to be established by the California Air Resources Board (CARB).

**10. LEGISLATION & GOVERNMENTAL ORGANIZATION COMMITTEE REPORT\*\***

**Information/ACTION:** Committee Chair Carole Dillon Knutson, Councilmember, City of Novato, will report on Committee activities and ask Board approval of Committee recommendations on pending legislation.

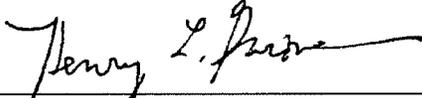
**11. FINANCE & PERSONNEL COMMITTEE REPORT\*\***

**Information/ACTION:** Committee Chair Scott Haggerty, Supervisor, Alameda County, will report on Committee activities and ask Board approval of Committee recommendations.

**CLOSED SESSION:** The following item will be discussed in closed session pursuant to the requirements of the Ralph M. Brown Act:

- **Proposed Labor Agreement with SEIU 1021**

**12. ADJOURNMENT**

  
Henry L. Gardner, Secretary-Treasurer

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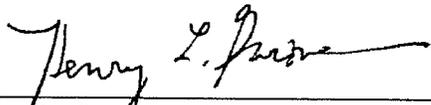
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**12. ADJOURNMENT**

  
Henry L. Gardner, Secretary-Treasurer



# ABAG CALENDAR – July & August 2009

ASSOCIATION OF BAY AREA GOVERNMENTS [ABAG], Joseph P. Bort MetroCenter, 101 Eighth Street, Oakland, CA 94607-4756  
ABAG Receptionist: 510/464-7900 E-mail: info@abag.ca.gov URL: http://www.abag.ca.gov

## JULY

### Legislation & Governmental Organization

7/16 @ 3:30 pm, MetroCenter, ABAG Conference Room B

### Finance & Personnel Committee

7/16 @ 5:00 pm, MetroCenter, ABAG Conference Room B

### EXECUTIVE BOARD

7/16 @ 7:00 pm, MetroCenter, Auditorium

### ABAG / BAAQMD / MTC Joint Policy Committee

7/17 @ 10:00 am, MetroCenter, Auditorium

### Urban Pesticides Committee

7/21 @ 9:00 am, MetroCenter Room 171

## AUGUST

### Regional Planning Committee (RPC)

8/5 @ 1:00 p.m., MetroCenter, Auditorium

### Bay Trail Steering Committee

8/13 @ 1:30 pm, MetroCenter, ABAG Conference Room B

### ABAG POWER Executive Committee

8/19 @ 12:00 p.m., MetroCenter, ABAG Conference Room B

- \*\* ABAG programs for which a fee is charged and pre-registration is required. To register or for further information, contact **ABAG Receptionist** at 510/464-7900.
- For additional ABAG Training Center information contact **Chanell Gumbs** at 510/464-7964.

M E M O

Date: July 2, 2009  
To: Executive Board  
From: Henry L. Gardner  
Executive Director   
Subject: **Executive Director's Report**

**State Budget Update**

As of this writing the state continues to be without a budget. The big five met with the Governor on Sunday, July 5<sup>th</sup>, but did not reach an agreement. Latest word from Sacramento is that the Assembly Speaker has refused to meet with the Governor because he was not addressing the state's budget shortfall and the current budget, but was insisting that a budget package include long-term solutions to the state's budget. While the Assembly continued to meet on Monday, July 6<sup>th</sup> and the Senate was in Caucus, no compromise was in sight. Meanwhile, California Bond rating has dropped from A- to BBB, the lowest since 2004 and a group of the largest banks have said they will stop accepting California's IOU's on Friday. WAITING FOR MORE INFO FROM MIKE

**SB 406 Update**

SB 406 (DeSaulnier) passed out of the final Assembly policy committee on Monday, July 6<sup>th</sup>. It will be heard by the Assembly Appropriations Committee by August 28<sup>th</sup>. The bill has already cleared Senate Local Government Committee and Senate Appropriations. If passed and signed by the Governor, SB 406 will provide much needed planning funds for the regions and local government to support the planning efforts associated with SB 375 (Steinberg). This bill will be discussed further during the staff report on SB 375.

**RHNA**

Several cities in the Southern California Area Governments region sued SCAG over their RHNA allocations. SCAG prevailed at the trial court and the cities appealed. SCAG asked ABAG to file an amicus brief and we did so. The court of appeals has ruled that cities and counties do not have the right to sue a COG over their allocations. The sole remedy is the process provided under the Housing element law. The text of the opinion can be found at

<http://www.courtinfo.ca.gov/opinions/documents/G040513.PDF>

**San Francisco Bay Trail**

The San Francisco Bay Trail Project had a 20th anniversary event on June 6 at the Hayward Shoreline Interpretive Center. The Hayward Shoreline Area Planning Agency, East Bay Regional Park District, City of Hayward, Hayward Area Recreation and Park District and ABAG's San Francisco Bay Trail Project hosted a reception celebrating the



20th anniversary of the Bay Trail and honoring Treasurer Bill Lockyer for his vision of the trail established 20 years ago with the adoption of the Bay Trail Plan by the ABAG Executive Board.

Other notable attendees/speakers included State Senator Ellen Corbett, former Assemblymember Johan Klehs, ABAG Vice President Mark Green, MTC Commissioner Scott Haggerty, Mayor Mike Sweeney of the City of Hayward, and Alameda County Supervisor Gail Steele.

There was renewed commitment to completing the remaining 200 miles of Bay Trail. Resolutions of support were received from Congressman Pete Stark, Senator Ellen Corbett, Assemblymembers Nancy Skinner, Sandre Swanson, Mary Hayadhi, Tom Torlakson, San Mateo County, Alameda County, MTC and the Midpeninsula Regional Open Space District.

### **FOCUS Forum**

FOCUS Forum continues its series of monthly meetings with focused discussions and guest speakers that provide opportunities to learn more about specific issues concerning the creation of complete communities near transit in urbanized areas. Upcoming meetings:

- "Health in Urban Areas" with guest speaker Dr. Richard Jackson, Thursday, July 9, 9:30 am to 11:30 am, 101 8th Street, MetroCenter Auditorium, Oakland;
- Projections 2009 Conference "Building Momentum", Thursday, June 18, 8:30 am to noon, The Commonwealth Club of California, The Blue Room, 595 Market Street, 2nd Floor, San Francisco.

For more information, please contact JoAnna Bullock at JoAnnaB@abag.ca.gov or (510) 464-7968.

### **ABAG Financial Services**

Financings delivered by ABAG and its affiliated entities since my last report include:

- \$42,100,000 in Insured Hospital Revenue Bonds issued on behalf of the County of Alameda for St. Rose Hospital's major renovation and seismic retrofit project;
- \$20,000,000 in Variable Rate Revenue Bonds issued on behalf of the County of Santa Clara to fund construction of a new music conservatory at Valley Christian School in San Jose.

# SUMMARY MINUTES

ABAG Executive Board Meeting  
No. 367, May 21, 2009  
MetroCenter Auditorium  
101 8th Street, Oakland, CA

## 1. CALL TO ORDER

President Rose Jacobs Gibson called the meeting to order at approximately 7:07 p.m.  
A revised agenda was distributed.

### Representatives and Alternates Present

Supervisor John Avalos  
Councilmember Jane Brunner  
Mayor Pro Tem David Casas  
Councilmember Kansen Chu  
Councilmember Carole Dillon-Knutson  
Councilmember Dan Furtado  
Mayor Jack Gingles  
Supervisor John Gioia  
Mayor Mark Green  
Supervisor Carole Groom  
Supervisor Scott Haggerty  
Supervisor Rose Jacobs Gibson  
Mayor Beverly Johnson  
Councilmember Ash Kalra  
Supervisor Mike Kerns  
Director Nancy Kirshner Rodriguez  
Supervisor Barbara Kondylis  
Councilmember Sam Liccardo  
Supervisor Mark Luce  
Supervisor Ross Mirkarimi  
Mayor Julie Pierce  
Mayor Harry Price  
Vice Mayor Jean Quan  
Mayor A. Sepi Richardson  
Supervisor Gail Steele  
Mayor Pamela Torliatt  
Supervisor Gayle B. Uilkema  
Councilmember Joanne Ward  
Terry Young

### Representatives Absent

Supervisor Susan Adams  
Supervisor David Cortese  
Councilmember Richard Garbarino  
Education Advisor Hydra Mendoza  
Councilmember Nancy Nadel  
Mayor Gavin Newsom  
Supervisor Ken Yeager

### Jurisdiction

County of San Francisco  
City of Oakland  
City of Los Altos  
City of San Jose  
City of Novato  
City of Campbell  
City of Calistoga  
County of Contra Costa  
City of Union City  
County of San Mateo  
County of Alameda  
County of San Mateo  
City of Alameda  
City of San Jose  
County of Sonoma  
City of San Francisco  
County of Solano  
City of San Jose  
County of Napa  
County of San Francisco  
City of Clayton  
City of Fairfield  
City of Oakland  
City of Brisbane  
County of Alameda  
City of Petaluma  
County of Contra Costa  
City of Hercules  
RWQCB

### Jurisdiction

County of Marin  
County of Santa Clara  
City of South San Francisco  
County of San Francisco  
City of Oakland  
City of San Francisco  
County of Santa Clara

**2. PUBLIC COMMENT**

There were no public comments.

**3. ANNOUNCEMENTS**

President Jacobs Gibson welcomed David Casas, Mayor Pro Tem, City of Los Altos, alternate representing cities in County of Santa Clara.

Mark Green, Mayor, City of Union City, announced the graduation of his son from the University of California, Berkeley. He reported on a recent Bay Trail event in San Francisco.

There were no other announcements.

**4. PRESIDENT'S REPORT**

President Jacobs Gibson reported on the following:

The winners of the 2009 Growing Smarter Together Awards were announced during the Spring General Assembly. The first Urban Design Category winner was presented this year to the City of Berkeley for Oxford Plaza Apartments and the David Brower Center. Other awardees include: the City of San Ramon won in the Sharing the Benefits Category for their innovative Housing Rehabilitation Program; the County of Alameda Public Works Department won in the Preserving and Protecting the Environment Category for the Peralta Creek Restoration Project; the City of Union City won in the On the Ground-Getting it Done Category for their Intermodal Station District Plan, and both AC Transit and BART were recognized for their contributions to this project; and the Housing Endowment and Regional Trust—the HEART of San Mateo County was awarded a Growing Smarter Together Award in the Public Private Partnership Category. The awards presentation is on the ABAG website.

At the General Assembly speakers and panelists helped to drive home the messages that ABAG has been making about focused growth, infill development, and climate protection and answered many questions about SB 375 and ABAG's approach and readiness for implementation. The PowerPoint presentation delivered by Vice President Mark Green and MTC Commissioner Steve Kinsey, as well as a glossary of terms, is available on the ABAG website.

During the Business Meeting the Annual Budget and Work Program and a bylaw amendment that allows flexibility in the scheduling of the Spring General Assembly were approved. The Fall General Assembly will once be held in San Francisco on October 22<sup>nd</sup>.

Since its establishment last year, the Youth Gun Violence Task Force has met and conducted independent research that has led to a decision to hold a convening of experts in the field of youth gun violence and building healthy communities on June 18<sup>th</sup>.

Additional ABAG Committee appointments will be made in July and throughout the year as vacancies occur.

Members were urged to support SB 406, introduced by Senator Mark DeSaulnier at the behest of ABAG and the California Council of Governments (CALCOG), would provide a much needed consistent source of financing for ABAG and MPOs

throughout the state as well as local governments for planning and implementation of SB 375. A draft letter of support was distributed.

## **5. EXECUTIVE DIRECTOR'S REPORT**

Executive Director Gardner reported on the following:

As a result of the recent election and the failure of Propositions 1A through 1E, the state deficit will increase, the state will resort to borrowing from cities and counties, and the state will likely freeze contracts and grants to public and private agencies.

The Legislative Analyst updated the State's cash flow analysis and concluded that the State may have to halt spending on bond funded projects and force delays in payments for work already performed which could have a significant impact on ABAG's Bay Trail Project and Estuary Project, both funded from State issued bond financings, and both have had payments delayed this fiscal year. Fortunately, ABAG was able to move employees to other projects that were not affected by the funding freeze, but that will probably not be possible if there is a future freeze, particularly for the Bay Trail Project. The Bay Trail Project is currently under funded and FY 2009-10 will be a challenge. The State is currently estimating an \$8 billion revenue shortfall for the remainder of the fiscal year.

The prospects of the State borrowing from cities and counties and cutting funding for existing programs are becoming more probable, and failure of the measures in the May 19 special election will make it all but certain. Cities and counties are facing enormous budget challenges themselves and have exhausted most of the options they have to close budget deficits without painful reductions in staff and services. The federal stimulus package will ease some of the State's budget problems, but not all of them, and will provide little immediate help to cities and counties.

The May Revision is expected to be released by the Governor on May 14, 2009. Should the ballot propositions fail, estimated to raise approximately \$6 billion, the Governor has indicated that possible actions might include the following: borrowing \$2 billion from cities, counties, and special districts; additional cuts to Medi-Cal; release of 40,000 nonviolent inmates from prison; release of undocumented inmates to the federal government; an additional \$3.6 billion reduction to schools.

In its 2007 Report to the Legislature on the Status of Housing Elements in California, the California Department of Housing and Community Development reports that for the planning period from December 31, 2001 to June 30, 2009, in ABAG's region, 92 out of 109 total jurisdictions, or 85 percent, had adopted housing elements that were in compliance in their general plans, the highest among other regions in the state. The report describes the status of local government compliance with housing element law statewide and by region.

To meet the requirements of SB 375, staff is taking steps to encourage the League of California Cities, the California State Association of Counties, and local jurisdictions to support SB 406 (DeSaulnier). SB 406 will allow the Metropolitan Planning Organizations the option of imposing a maximum \$2 as a registration fee on automobiles to generate funds that can support the significant planning responsibilities to provide for the orderly growth in a sustainable manner and to meet greenhouse gas reduction targets placed on MPOs by SB 375. Through SB 406, local governments will receive 50 percent of funding for direct assistance in the SB 375 planning process, with the remainder going to MPOs to complete plans to meet regional targets.

The San Francisco Bay Restoration Authority Governing Board held its first meeting on April 22. Chaired by Samuel Schuchat, Executive Officer of the California State Coastal Conservancy, all appointed members of the Governing Board were present and heard a summary of the legislation establishing the Authority and an overview of San Francisco Bay wetlands restoration projects and opportunities. The Governing Board accepted the support offered by ABAG and the State Coastal Conservancy to provide staff to the Authority. The next Governing Board meeting is scheduled for July 29.

FOCUS Forum continues its series of monthly meetings with focused discussions and guest speakers that provide opportunities to learn more about specific issues concerning the creation of complete communities near transit in urbanized areas. Upcoming meetings include: "Air Quality in Our Communities" with guest speaker Dave Vintze, Program Manager BAAQMD, Thursday, May 14; "Development With Diversity" featuring the sub-recipients of the Caltrans Environmental Justice grant, Thursday, June 25; "Health in Urban Areas" with guest speaker Dr. Richard Jackson, Thursday, July 9; Projections 2009 Conference "Building Momentum", Thursday, June 18.

On May 1, 2009 ABAG submitted its Final Partnership Report to PG&E. The successful conclusion of the program included the following accomplishments: provided technical assistance to 61 agencies in the Bay Area, identifying over 600 potential energy savings projects; completed 309 energy efficiency projects in local government facilities for 48 separate agencies; saved over 25,000,000 kWh/yr and 580,000 therm/yr.

ABAG has successfully transitioned the energy efficiency assistance previously provided by the ABAG Energy Watch program to new, sub-regional Energy Watch programs for the 2009-11 program cycle, and is now working with PG&E on the Green Communities effort.

In 2006, ABAG POWER joined a lawsuit against natural gas trading companies that manipulated commodity prices during 1999-2001. As of May 2009, ABAG POWER has recovered \$500,000 (net) on behalf of 45 past and current members.

Members discussed the impact of State's budget on the San Francisco Bay Conservation and Development Commission (BCDC), and the state borrowing from cities.

President Jacobs Gibson thanked Executive Director Gardner for his report.

## **6. CONSENT CALENDAR**

President Jacobs Gibson recognized a motion by Sepi Richardson, Mayor, City of Brisbane, and seconded by Mike Kerns, Supervisor, County of Sonoma, to approve the consent calendar. The motion passed unanimously.

### **A. Approval of Executive Board Summary Minutes\*\***

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### **B. Grant Applications**

A list of grant applications was approved for submission to the State Clearinghouse, having been circulated in ABAG's "Intergovernmental Review Newsletter" since the last Executive Board meeting.

**C. Appointment to Committees**

Approved the following appointment to committee:

Bay Area Council Economic Institute\*  
Roseanne Faust, Mayor, Redwood City

**D. Authorization to Renew Agreement with Michael J. Arnold and Associates, Legislative Advocate\*\***

Authorization approved to renew the agreement with Michael J. Arnold and Associates in an amount not to exceed \$60,000 to provide legislative advocacy on behalf of ABAG in Sacramento.

**E. Authorization for the Executive Director or Designee to Enter into Agreement for Grant from US Geological Survey\*\***

Authorization approved for the Executive Director or designee to enter into agreement with the US Geological Survey to update public outreach materials on ABAG's website. Agreement will not exceed \$80,000.

**F. Authorization is Requested for the Executive Director or Designee to Enter Into Contract Agreements for Estuary 2100 Grant\*\***

At the July 2008 meeting the Executive Board authorized entering into a grant agreement with the U.S EPA in the amount of \$4,922,000 under the San Francisco Bay Water Quality Improvement fund. Authorization approved to enter into agreements with 16 agencies totaling \$4,104,076.

**G. Authorization to Amend or Enter into Agreement with US Environmental Protection Agency (EPA)\*\***

Authorization approved for the Executive Director or designee to amend or enter into a new cooperative agreement with EPA on behalf of the San Francisco Estuary Project to provide technical, public involvement and administrative support in implementing the Comprehensive Conservation and Management Plan (CCMP). The agreement term will be extended to December 31, 2010.

**H. Authorization and Approval of Resolution No. 09-09 to Enter into Financial Assistance Agreement for American Recovery and Reinvestment Act (AARA) Funds\*\***

Authorization approved for approval of Resolution No. 09-09 entering into agreement with the State Water Resources Control Board for financial assistance agreement with the State of California and the State Water Resources Control Board.

**I. Authorization and Approval of Resolution No. 10-09 to Enter into Agreement for Clean Water State Revolving Fund for \$7.8 Million in Stimulus Funding for Bay Area Trash Capture Demonstration Project\*\***

Authorization approved for approval of Resolution 10-09 transmitting application for funding for Bay Area-Wide Trash Capture Demonstration Project. The proposal includes significant public education and technology transfer elements.

**J. Authorization to Enter into Financial Assistance Agreement under American Recovery and Reinvestment Act of 2009 (ARRA)\*\***

Application for State Revolving Fund program funding for the El Cerrito Green Streets Project was approved by the Executive board in Resolution 04-09 adopted on March 19, 2009. The State Water Resources Control Board requests an

additional Resolution using specific language drafted by the State Board.  
Approved Resolution No. 11-09.

**K. Approval of Resolution Recognizing State Treasurer Bill Lockyer for Supporting the San Francisco Bay Trail Project**

Approved resolution recognizing State Treasurer Bill Lockyer for supporting the San Francisco Bay Trail Project since the passage of SB 100 in 1987 and efforts to complete the continuous trail around the San Francisco Bay.

**L. Approval of Resolution No. 13-09 Authorizing the ABAG Secretary-Treasurer to Designate Authorized Check Signers\*\***

Bank of the West requires a resolution authorizing designated signers for ABAG checks. Approved Resolution No. 13-09 authorizing the ABAG Secretary-Treasurer to designate check signers.

**7. BAY FRIENDLY LANDSCAPING PRACTICES\*\***

Teresa Eade, Senior Program Manager, StopWaste.Org, and Michelle LeBeau, Bay-Friendly Landscaping & Gardening Coalition, made a presentation about Bay-Friendly programs and services. The presentation included a description of conventional landscapes, the seven principles of Bay-Friendly landscaping and its benefits, regional approach, landscape standards and resources, coalition participants, and future programs.

Members discussed edible landscapes, community gardens, gray water permitting, the significance of adopting the charter, current legislation affecting home owners associations' CC&Rs, StopWaste.Org materials and workshops, reducing storm water pollution, third-party certification, master gardener programs, and Integrated Pest Management.

President Jacobs Gibson recognized a motion by Jean Quan, Councilmember, City of Oakland, and which was seconded, to endorse the Bay Friendly 7 Principles Charter, encourage staff to incorporate Bay Friendly criteria in relevant programs, encourage continued development of a landscape verification program, and inform ABAG members of these actions. The motion passed unanimously.

President Jacobs Gibson thanked Ms. Eades and Ms. LeBeau for their report.

**8. BAY TRAIL 20TH ANNIVERSARY\*\***

Laura Thompson, Bay Trail Project Manager, provided the Board with a status report on the Bay Trail gap analysis and announced a schedule of 20th anniversary activities. She described the progress made over the past 20 years of the Bay Trail, partnerships, and grant program. She thanked the Board for adopting the resolution recognizing the contributions of Bill Lockyer, State Treasurer, who will be at the anniversary celebration on June 6<sup>th</sup>.

Members discussed lobbying for support through the federal reauthorization and transportation bill and acknowledged Bay Trail Project staff for their work.

President Jacobs Gibson thanked Ms. Thompson for her report.

**9. ABAG'S INTERACTIONS WITH THE JOINT POLICY COMMITTEE IN IMPLEMENTING SB 375\*\***

Paul Fassinger, ABAG Research Director, presented recommendations for how

decision-making and staff work will be organized for upcoming regional initiatives. He noted recent actions by the Joint Policy Committee regarding draft policies for implementing SB 375, reviewed SB 375, policy models, described constructing integrated models, and listed outreach plans. He further described the required integration of work efforts and staff recommendations for discussing proposals with regional agencies and local stakeholders.

Members discussed the planning and modeling fatigue and the connection between RHNA, Projections, and the Sustainable Communities Strategy; technical level discussions; buy-in by local jurisdictions; the role of modeling regarding proposed development in salt flats.

Executive Director Gardner commented on the need for staff to present issues and their implications that should be addressed by members prior to action being taken at the Joint Policy Committee.

President Jacobs Gibson recognized a motion by Sam Liccardo, Councilmember, City of San Jose, and seconded by Barbara Kondylis, Supervisor, County of Solano, to accept the report. The motion passed unanimously.

President Jacobs Gibson thanked Mr. Fassinger for his report.

#### **10. ABAG REGIONAL SOLAR ENERGY EFFICIENCY PROGRAM UPDATE\*\***

Ezra Rapport, ABAG Deputy Executive Director, provided the Board with an update on plans for a regional solar energy efficiency finance program. He described the role of PG&E, legal issues, assessment versus special tax districts, special tax validation, and finance bonds in the formation of Solar and Energy Efficiency financing districts.

Members discussed Mello Roos districts, energy loading, commercial property, solar capacity and technology developments, providing status update to members, program timeline, implementation of SB 279, single form for solar permitting, Community Choice Aggregation, residential low-income diversification, public housing and non-profit housing, bonding, and federal rebates.

President Jacobs Gibson thanked Mr. Rapport for his report.

#### **11. LEGISLATION & GOVERNMENTAL ORGANIZATION COMMITTEE REPORT\*\***

President Jacobs Gibson recognized Committee Chair Carole Dillon Knutsen, Councilmember, City of Novato, who reported on recommendations on bills for consideration in the 2009 Legislative Session, including SB 406 (DeSaulnier), Land Use: Environmental Quality (support); SB 575 (Steinberg), Local Planning: Housing Element (support); AB 349 (Silva), State Mandates (support and follow-up); AB 155 (Mendoza), Local Government: Bankruptcy (oppose); ACA 9 (Huffman), Local Government Bonds: Special Taxes, Voter Approval (support); AD 1342 (Evans), Local Taxation: Income Taxes, Vehicle License Fees (support); SB 7 (Wiggins), Renewable Energy Sources: Feed-in Tariff, Net Metering (support if amended); SB 676 (Wolk), Local Fees (support); AB 1520 (Evans), State Watershed Program (support in concept); and AB 87 (Davis), Single Use Carryout Bags: Environmental Effects, Mitigation (support).

She reported on committee activities, including: discussion of Multi-County Delta Resolution and water planning priorities; summarized issues and challenges raised during the ABAG Spring General Assembly and Bay Area Air Quality Management

District Climate Action Summit; discussion of the current budget situation and participation with the League of California Cities and the California State Association of Counties on budget impacts; consideration of AB 744 (Torrico), Transportation: Toll Lanes, Express Lane Network, and AB 881 (Huffman), Sonoma County Regional Climate Protection Authority, Greenhouse Gas Emissions; and a briefing on efforts to address government dysfunction to the next committee meeting agenda.

Members discussed ACA 9, AB 1061, and AB 87.

President Jacobs Gibson recognized a motion by Chair Dillon Knutsen, and seconded by Supervisor Kerns to approve the committee report as amended to indicate support of AB 87. The motion passed with one nay vote related to ACA 9 (Gayle B. Uilkema, Supervisor, County of Contra Costa).

President Jacobs Gibson thanked Chair Dillon Knutsen for her report.

## **12. FINANCE & PERSONNEL COMMITTEE REPORT\*\***

President Jacobs Gibson recognized Committee Chair Scott Haggerty, Supervisor, County of Alameda, who reported on committee activities, including: approval of financial reports for March and April; and approval of contribution to the Tranter-Leong Internship Program in the amount of \$17,000 for Fiscal Year 2009-2010. He asked to members to encourage counties and cities to pay their dues.

President Jacobs Gibson recognized a motion by Chair Haggerty, and seconded by John Gioia, Supervisor, County of Contra Costa, to approve the committee report. The motion passed unanimously.

President Jacobs Gibson thanked Chair Haggerty for his report.

The Board entered closed session at 9:23 p.m.

The Board entered open session at 9:30 p.m.

Chair Haggerty reported that members met with ABAG's labor team and gave general direction with regards to labor negotiations with SEIU Local 1021.

He also reported that a Public Employee Performance Evaluation was conducted for the Legal Counsel whose performance was recognized by members. Due to the economic climate, no salary enhancement was given. Members expressed appreciation for the employee's consideration by not requesting a salary adjustment.

**13. ADJOURNMENT**

Meeting adjourned at approximately 9:32 p.m.

  
Henry L. Gardner, Secretary-Treasurer

\*\* Indicates attachments.

\*\*\* For information on the L&GO Committee, contact Patricia Jones at (510) 464 7933 or [PatJ@abag.ca.gov](mailto:PatJ@abag.ca.gov), or Kathleen Cha at (510) 464 7922 or [KathleenC@abag.ca.gov](mailto:KathleenC@abag.ca.gov).

All ABAG Executive Board meetings are recorded. To arrange for review of these tapes, please contact Fred Castro, Clerk of the Board, at (510) 464-7913 or [FredC@abag.ca.gov](mailto:FredC@abag.ca.gov).





**ALAMEDA COUNTY**

Applicant: Port of Oakland

Program:

Project: Federal Aviation Administration

Description: Reconstruction of East Apron, Phase 3, Taxilane Sierra and West Ramp, South Field, OIA

Cost:	Total:	\$4,700,000.00	Federal	\$4,700,000.00	State:	\$0.00
			Applicant	\$0.00	Local	\$0.00
					Other	\$0.00

Contact: Christina Lee (510) 627-1510  
ABAG Clearinghouse Number 14743

**ASSOCIATION OF BAY AREA GOVERNMENTS  
EXECUTIVE BOARD**

**RESOLUTION NO. 15-09**

**RECOGNIZING THE COMMITMENT AND  
OUTSTANDING CONTRIBUTIONS OF JOSEPH K. CHAN**

**WHEREAS**, Joseph K. Chan has contributed 26 years of dedicated service to the Association of Bay Area Governments and its members and will retire on June 30, 2009; and

**WHEREAS**, Joseph K. Chan has effectively helped guide ABAG through a number of changes. When he started in 1983, ABAG had 33 employees, was located in the basement of the Claremont Hotel, membership dues revenue was \$344,097, and the budget was \$1,478,400. Today, after 26 years of his financial stewardship, ABAG has 80 employees, is located in the MetroCenter and owns its own office space, has revenue of \$1,661,843 for Fiscal Year 2009-2010, and a budget of \$28,910,066 for Fiscal Year 2009-2010; and

**WHEREAS**, Joseph K. Chan moved ABAG's accounting processes from "the stone age to the modern age." In 1999, ABAG purchased a financial system from Oracle. Prior to that, the Accounting Department used manual ledgers and software modules developed in house and purchased from software companies; and

**WHEREAS**, Joseph K. Chan has served as staff lead for the Finance and Personnel Committee for approximately 156 meetings or 300 hours. This committee is responsible for ABAG's budget, audits, personnel rules and regulations, salary and benefits plans, and other duties; and

**WHEREAS**, Joseph K. Chan serves on the STARS Executive Committee, which is the governing board for a pooled government employee retirement account. His leadership helped start the STARS program in July of 2001 with 30 participating public agencies. Eight years later, the program has 1873 participants and over \$47 million in combined assets. He was recently a catalyst for bringing an alternative provider to the STARS Executive Committee that may enable participants to realize greater savings; and

**WHEREAS**, Joseph K. Chan helped guide local governments through the implementation of a significant new accounting rule via a well-attended symposium. Government Accounting Standards Board (GASB) has issued Statement #45- Accounting and Financial Reporting by Employers for Post Employment Benefits other than Pensions, requiring states, local governments and public entities to adopt accrual basis of accounting for post employment benefits, instead of the pay as you go basis most employers used. The Post Retirement Benefits Symposium was well attended, highly acclaimed, and was the first of its kind.

**ASSOCIATION OF BAY AREA GOVERNMENTS  
RESOLUTION NO. 15-09**

**NOW, THEREFORE BE IT RESOLVED**, that the Executive Board of the Association of Bay Area Governments hereby extends its thanks and appreciation to Joseph K. Chan for his long-term commitment and outstanding contributions; and

**LET IT BE FURTHER RESOLVED**, that the Executive Board commends Joseph K. Chan for his many years of financial stewardship and wishes him an enjoyable retirement.

The foregoing adopted by the Executive Board this 16<sup>th</sup> day of July, 2009.

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Rose Jacobs Gibson  
President

**Certification of Executive Board Approval**

I, the undersigned, the appointed and qualified Secretary-Treasurer of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Executive Board of the Association at a duly called meeting held on the 16<sup>th</sup> day of July, 2009.

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Henry L. Gardner  
Secretary-Treasurer

**Approved as To Legal Form**

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Kenneth K. Moy  
Legal Counsel



MEMO

**Submitted by:** Laura Thompson, Bay Trail Project Manager

**Subject:** Request for Authorization to Submit \$250,000 Grant Application and Enter into Contract with the Metropolitan Transportation Commission

**Date:** July 16, 2009

**Executive Summary**

Authorization is requested to submit a grant application to the Metropolitan Transportation Commission under the Bridge Toll Funds "Five Percent Unrestricted State Funds" category and to enter into an agreement with MTC in the amount of \$250,000 for administration of the San Francisco Bay Trail Project.

**Recommended Action**

Executive Board Authorization to Submit \$250,000 Grant Application and enter into contract with the Metropolitan Transportation Commission.

**Next Steps**

Enter into contract with MTC in an amount of \$250,000 for administration of the San Francisco Bay Trail Project.

**Attachments**

Item 6.E.



**Date:** July 16, 2009

**To:** ABAG Executive Board

**From:** Laura Thompson, Bay Trail Project Manager *LT*

**Subject:** Request for Authorization to Submit \$250,000 Grant Application and Enter into Contract with the Metropolitan Transportation Commission

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The San Francisco Bay Trail Project will submit a funding application request in the amount of \$250,000 to MTC under the FY 2009-2010 Bridge Toll Funds Five Percent Unrestricted State Funds category, pending Executive Board authorization.

The Bay Trail is the foundation of the region's non-motorized transportation system and is closely tied to MTC's mission of supporting the development of bicycle and pedestrian facilities. In recognition of the Bay Trail's role in reducing congestion by providing transportation alternatives, the project has been supported through the Five Percent Unrestricted State Funds program since the early 1990s. In April this year, MTC adopted new eligibility standards identifying ABAG's Bay Trail Project as the sole priority for the Five Percent State General Fund Revenues for bicycle planning.

The revised policy reads: "Program 5% State General Fund Revenues from the northern and southern bridge groups to ABAG for administration of the San Francisco Bay Trail [P]roject at a \$250,000 funding level. The amount of 5% State General Fund Revenues programmed to ABAG shall be adjusted by the rate of increase in 5% State General Fund Revenues or the rate of increase in the Consumer Price Index, whichever is less, every three years, with the first adjustment occurring with FY 20011-12 based calculations."

MTC's financial contribution to ABAG for administrative support of the Bay Trail Project has made it possible to provide dedicated staff for this regional project and to coordinate the completion of the Bay Trail through education, outreach, fundraising and technical support for shoreline jurisdictions.



MEMO

July 2, 2009

**TO:** ABAG Executive Board

**FR:** Ezra Rapport, Deputy Executive Director *ER*

**RE:** Authorization to Apply for U.S. Environmental Protection Agency (EPA) Climate Showcase Communities Grant

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Authorization is requested for ABAG to submit a proposal for up to \$500,000 in grant funding from U.S. EPA's Climate Showcase Communities Grant Program, and if awarded, to enter into an agreement with U.S. EPA. A 50% match is required and can be in the form of in-kind services. The grant period for awards will begin January 1, 2010, and the proposed project period may be up to three years. The proposal will enable ABAG to provide technical assistance to local governments interested in understanding how their actions achieve reductions in greenhouse gas emissions.

The attached resolution will authorize the proposal submission and if awarded, the ABAG Executive Director or designee to sign the grant contract and all related documents.

**Recommended Action:** Adopt Resolution 14-09

Item 6.F.

**ASSOCIATION OF BAY AREA GOVERNMENTS  
EXECUTIVE BOARD**

**RESOLUTION NO. 14-09**

**RESOLUTION AUTHORIZING SUBMISSION OF GRANT APPLICATION TO THE US  
ENVIRONMENTAL PROTECTION AGENCY AND, IF AWARDED, AUTHORIZING  
THE EXECUTION OF GRANT CONTRACT AND RELATED DOCUMENTS**

**WHEREAS**, the Association of Bay Area Governments (hereinafter "ABAG") is a joint powers agency formed pursuant to the agreement of its members and California Government Code §§ 6500, et seq., and is the council of governments (COG) for the San Francisco Bay Area; and

**WHEREAS**, the US Environmental Protection Agency (EPA) has made funding available under its Climate Showcase Communities Grant Program and ABAG is eligible for such funds; and

**WHEREAS**, ABAG staff has prepared an application for submission to the US EPA as described in the memorandum on this matter dated July 1, 2009.

**ASSOCIATION OF BAY AREA GOVERNMENTS  
RESOLUTION NO. 14-09**

**NOW, THEREFORE BE IT RESOLVED**, that the Executive Board of the Association of Bay Area Governments hereby approves and authorizes the submission of the grant application and, if awarded, further authorizes the Executive Director or his designee to execute the Grant Agreement between the US Environmental Protection Agency and the Association of Bay Area Governments and all other related documents.

The foregoing adopted by the Executive Board this 16<sup>th</sup> day of July, 2009.

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Rose Jacobs Gibson  
President

**Certification of Executive Board Approval**

I, the undersigned, the appointed and qualified Secretary-Treasurer of the Association of Bay Area Governments (Association), do hereby certify that the foregoing resolution was adopted by the Executive Board of the Association at a duly called meeting held on the 16<sup>th</sup> day of July, 2009.

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Henry L. Gardner  
Secretary-Treasurer

**Approved as To Legal Form**

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Kenneth K. Moy  
Legal Counsel



## MEMO

**Submitted by:** Ceil Scandone *(CS)*  
**Subject:** Bay Area Green Business Program  
2009 Status Report and Certified Public Agency Recognition  
**Date:** July 16, 2009

### Executive Summary

The Bay Area Green Business Program (Program) was initiated in 1996 by ABAG's Hazardous Waste Management Facility Allocation Committee. The Program assists and recognizes businesses, organizations and public agency facilities that voluntarily exceed regulatory compliance to prevent pollution, conserve resources, and minimize waste.

Annually, staff provides a Program update and asks the Executive Board to recognize the public agencies and officials whose facilities have recently been designated as Green Businesses. Since the last recognition event in March 2007, 25 public agency facilities have been added to our Directory (see Attachment A). The number includes a very significant "first." This year, we are proud to announce the first certification of a U.S. Congressman's office: the district office of United States Congresswoman Anna Eshoo in Palo Alto.

### Recommended Action

Staff requests that the Executive Board recognize the 25 Certified Green Business public facilities as environmental leaders who are protecting the environment and public health, providing a safer workplace, reducing their greenhouse gas emissions, and setting an exemplary example for businesses, residents and other public agencies in their communities and our region.

### Next Steps

Introduce and present the 25 public agency honorees with Certificates of Recognition for their environmentally responsible actions and leadership in achieving Green Business Certification.

**Attachments:** Staff Memo and List of Honorees





M E M O

**To:** Executive Board

**From:** Ceil Scandone   
Senior Regional Planner/Green Business Coordinator

**Subject:** Bay Area Green Business Program  
2009 Status Report and Certified Public Agency Recognition

**Date:** July 16, 2009

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**INTRODUCTION**

The Bay Area Green Business Program (Program) was initiated in 1996 by ABAG's Hazardous Waste Management Facility Allocation Committee. The Program assists and recognizes businesses, organizations and public agency facilities that voluntarily exceed regulatory compliance to prevent pollution, conserve resources, and minimize waste.

The first businesses were recognized in 1997 in Alameda and Napa Counties. Other counties joined in subsequent years. Since 2007, all nine Bay Area counties have offered the Program. Currently, there are 1,800 firms certified, including 120 public facilities. All are listed on the Program website at [www.greenbiz.ca.gov](http://www.greenbiz.ca.gov).

The Program serves small businesses, with a focus on consumer-oriented firms. The diverse roster of participants includes auto body and repair shops, printers, wineries, restaurants, hotels, janitorial services, retail shops, remodeling contractors, attorneys, architects, dentists, landscapers, public agency fleets, police and fire stations, senior centers, K – 12 schools, universities, civic centers and water treatment plants.

Annually, we provide a Program update and ask the Executive Board to recognize the agencies and officials whose facilities have recently been designated as Green Businesses. Since March 2007, 25 public agency facilities have been added to our Directory (see Attachment A). The number includes a very significant "first." This year, we are proud to announce the first certification of a U.S. Congressman's office: the district office of United States Congresswoman Anna Eshoo in Palo Alto.

**ACTION REQUESTED**

Staff requests that the Executive Board recognize the 25 Certified Green Business public facilities as environmental leaders who are protecting the environment and public health, providing a safer workplace, reducing their greenhouse gas emissions, and setting an exemplary example for businesses, residents and other public agencies in their communities and our region.



## STATUS REPORT

The Bay Area Green Business Program had another very busy and successful year. Collectively, the nine counties added 498 businesses to the listings-an increase of 36%. Most counties continue to experience high demand and some have waiting lists.

Certifications occur at the county level. The County Coordinators recruit and assist businesses through the process. They also coordinate the participation of the public agencies, utilities and other partners who ensure that prospective green businesses meet the Program standards.

The regional office, staffed by ABAG, facilitates ongoing collaboration among the county coordinators to ensure program consistency, the efficient development of materials, and maintenance of the website and other resources. The regional coordinator also seeks new funding opportunities to expand the local programs and support additional marketing, measurement, web and other resources at the regional level, and responds to inquiries from jurisdictions interested in initiating Green Business Programs..

County status and highlights of recent accomplishments include:

- **Alameda County** has 410 Green Businesses. As one of the first counties to offer the program, Alameda has been busy recertifying businesses, some for the fourth time, and responding to increased demand. Alameda County is currently celebrating its 12<sup>th</sup> year certifying Green Businesses by making stronger connections to Green Jobs and Green Economy efforts in the East Bay.
- **Contra Costa County** has 360 Green Businesses. In 2008, they celebrated their ten year anniversary, created a program video, and intensified efforts to attract businesses in far East County. With 120 recertifications this year, the County developed guidelines to streamline the process. The new procedures were tested to ensure they achieve the same high level of integrity, and are available to all counties. The County also led efforts to develop higher certification standards for the regional program.
- **Marin County** has 346 Green Businesses. The County launched their Program in 2002 as a pilot with City of Novato, and quickly expanded countywide. Last year, the Program successfully worked with the County's Fairgrounds to assist them with obtaining certification and with organizing their 2007 "Greenest County Fair on Earth" event.
- **Napa County** has 54 Green Businesses certified since reactivating its Program in 2007. The Program formed key partnerships with the Napa Vintners Association, which is helping to recruit its members to the Program, and with the Napa County Transportation Planning Agency, which has assigned staff to expand the Program to office and retail operations, hotels, restaurants and other businesses.
- **San Mateo County** has 95 Green Businesses. The County launched its pilot Program in July 2007 with six cities. Since then, four more have signed on: Half Moon Bay, Pacifica, Portola Valley and San Bruno. The partnership with San Francisco International Airport and the San Francisco Public Utilities Commission has resulted

in 12 businesses certified to date. The County continues to build partnerships to support program expansion, with the goal of offering the program countywide.

- **San Francisco** has 140 Green Businesses. In early 2009, the program developed a new San Francisco specific logo and website to target local consumers. The program is working with consultants to develop strategy for expansion to new sectors. San Francisco has led the statewide efforts to develop an online, web-based green business tracking and measurement database to be launched Summer 2009 .
- **Santa Clara County** has 404 Green Businesses. More than half of those businesses have been certified in the past two years, as the desire to make their business practices more environmentally sound has grown to an all time high. It is rewarding to have so many public agencies setting the example for the business community by becoming certified themselves..
- **Sonoma County** has 63 Green Businesses. For several years, the County focused its Program on wineries and regulated businesses such as auto repair shops. Recently, the Program established a partnership with the county Economic Development Board that has provided the staff resources needed to work with a variety of new industries.
- **Solano County** has 3 Green Businesses. The County launched its pilot program to auto repair shops and other regulated businesses in July 2007. The Board of Supervisors authorized a second pilot year with expansion to additional industries in 2008. Several businesses are close to certification and a number of others are in the pipeline.

- **Regional Program:**

**Checklists:** The Program completed the systematic update of all checklists, finishing up with the Pollution Prevention section earlier this year. A new checklist, currently in final draft form, was developed for Custodial/Janitorial Services. The original General Standards checklist was substantially revised for use with Small Manufacturers.

**Measurement System:** A generous \$90,000 grant from longtime partner Cal EPA Department of Toxic Substances Control provided foundation funding to develop a measurement system that will collect data from Green Businesses and calculate the amount of energy and water conserved, waste diverted, pollution prevented and greenhouse gas emissions reduced. Many counties in the Bay Area and throughout the state contributed additional funds so that the System could add additional functions. Two in particular will significantly enhance program efficiency.

First, the system will operate as a program management tool. Many procedures currently handled by mail, email, fax and phone will be automated and become paper-free. This feature is expected to speed up the certification process by 30%.

Second, the system will convert the Green Business listings to a searchable database format. The online listings will be updated instantaneously whenever a business achieves Green Business status. The system will allow Green Businesses to have more descriptive listings, and will make it easier for potential customers to find Green Businesses. It will also eliminate the need to manually update the website to add new businesses.

System development is being managed by the San Francisco Green Business Program with the support and participation of all coordinators in the Bay Area and beyond. This has been a significant undertaking for all involved, most particularly San Francisco staff. Once completed, the system will be available to Green Business Programs throughout the state. It is being closely watched by US EPA for its potential for use elsewhere in the country.

**Website:** Implementation of the measurement system will include a significant improvement to the Program website by converting the business listings to a searchable database. Along with that change we are updating the look, reorganizing the site and adding new features. Green Businesses will soon be able to take advantage of an online marketing toolkit developed for the Program by Contra Costa County. Support from the Bay Area Air Quality Management District towards Program outreach helped to fund the web improvements.

**Outreach:** With increased interest in green business practices, the Program continues to be featured in newspaper and magazine articles, and on radio and television spots. Local coordinators have established relationships with local and regional business journals and magazines that feature Bay Area Green Businesses regularly. The Program and our businesses are also represented in two very successful coupon books, the Green Zebra and the EcoMetro Guides.

#### **PROGRAM EXPANSION:**

Developed in the Bay Area 14 years ago, the Program now serves as a model for other counties in California and beyond. Santa Cruz, Monterey, San Benito, San Diego and Santa Barbara counties and the City of Santa Monica offer Green Business Programs. Collectively, they have certified close to 300 businesses. The City of Los Angeles is organizing a program. Fresno and Humboldt counties and the cities of Long Beach and Torrance have made inquiries.

To promote efficiency, consistency and innovation, Bay Area coordinators joined with counterparts around the state, US EPA's Environmental Finance Center Region 9, and Cal EPA-DTSC to establish the California Green Business Programs Network. Members meet at least twice a year to discuss program expansion and issues of mutual interest. The Network has greatly facilitated communications, information and task sharing over the past year as the coordinators and contractor worked together to design and build the new measurement system.

The Program has attracted attention from beyond California. Montgomery County, Maryland is about to launch a program. Westchester County, New York is organizing.

#### **CERTIFIED PUBLIC AGENCIES**

The Program helps businesses implement environmentally-responsible practices. Many public agencies serve as "certification partners," verifying that businesses have achieved Program standards. Many agencies provide funding support to their county programs.

More than 120 public agencies have taken their commitment a further step by successfully seeking certification.

Certified public entities include fleet maintenance operations, print shops, corporation yards, civic centers, fire stations, a city, two towns, elementary schools, water districts, sanitary districts, waste authorities, libraries, performing arts and senior centers, county supervisors and state legislators offices and, for the first time this year, the district office of a United States Congress Member, the Honorable Anna Eshoo. The 25 public facilities certified this year are listed on Attachment A.

#### **FOR MORE INFORMATION**

If you would like to seek green business certification for facilities in your jurisdiction, please contact me at 510/464-7961 or at [ceils@abag.ca.gov](mailto:ceils@abag.ca.gov) or your county Green Business coordinator. The County Coordinators are listed on the “Contact Us” page of the program website at: [www.greenbiz.ca.gov](http://www.greenbiz.ca.gov).

## **Attachment A**

The following city, county, special district, state and federal facilities achieved Green Business status since March 2007:

### **Alameda County**

Assemblymember Mary Hayashi, Hayward Office  
Tri-Cities One-Stop Career Center, Newark  
Union Sanitary District

### **Contra Costa County**

511 Contra Costa, Pleasant Hill Office  
City of El Cerrito, City Hall  
City of Lafayette, City Offices

### **Napa County**

Napa County Transportation and Planning Agency

### **San Mateo County**

City of Redwood City, City Hall  
City of Millbrae, City Hall  
Millbrae Public Library  
San Mateo County Human Services Agency – Redwood City Office  
San Mateo County Human Services Agency – San Carlos Office

### **Santa Clara County**

Office of Congresswoman Anna G. Eshoo, 14th District  
City of Campbell  
City of Gilroy Police Department  
City of Saratoga  
Santa Clara County Board of Supervisors, Office of Supervisor Ken Yeager, District 4  
Santa Clara County Board of Supervisors, Office of Supervisor Dave Cortese, District 3  
Santa Clara County Board of Supervisors, Office of Supervisor Liz Kniss, District 5  
Santa Clara County Controller-Treasurer, ASAP/HARP  
Santa Clara County Office of County Counsel, Hedding Street Office  
Santa Clara County Department of Environmental Health  
Santa Clara County Office of Human Relations  
Santa Clara County Parks and Recreation Department – Administration  
Santa Clara County Department of Planning and Development

## MEMO

**Submitted to:** ABAG Executive Board

**Submitted by:** Ezra Rapport, ABAG Deputy Executive Director *er*

**Subject:** Solar and Energy Efficiency Financing District

**Date:** July 2, 2009

### **Executive Summary**

ABAG and PG&E are jointly developing a San Francisco Bay Area region-wide solar and energy efficiency financing district. As currently envisioned, the program would offer a “one-stop shop” for customers to take advantage of property-based financing in support of ‘bundled’ energy efficiency and renewable projects to meet their energy management needs. The initial program concept was outlined in a staff report for the March 2009 Executive Board meeting, and a status update was provided at the May 2009 Executive Board meeting. This staff report outlines progress made to date on broad program design elements; market research planning; business case development; and provides a legislative update on Senate Bill 279.

### **Recommended Action**

This agenda item is informational. The attached staff report provides an update on program activities.

### **Next Steps**

ABAG and PG&E will continue working together to advance program design, market research analysis, business case development, and passage of SB 279.

**Attachments:** Solar and Energy Efficiency Financing District Report

# **Solar and Energy Efficiency Financing District**

## **Continued Program Definition**

### **Overview**

ABAG and PG&E are jointly developing a San Francisco Bay Area region-wide solar and energy efficiency financing district. As currently envisioned, the program would offer a “one-stop shop” for customers to take advantage of property-based financing in support of ‘bundled’ energy efficiency and renewable projects to meet their energy management needs. The program would be supportive of climate goals outlined in the Scoping Plan prepared by the California Air Resources Board, the California Energy Efficiency Strategic Plan, and local climate action plans, while also promoting job creation. The initial program concept was outlined in a staff report for the March 2009 Executive Board meeting, and a status update was provided at the May 2009 Executive Board meeting. This staff report outlines progress made to date on broad program design elements; market research planning; business case development; and provides a legislative update on Senate Bill 279. Since the program is in the development phase, information provided in this report is subject to change.

### **Program Design Activities**

Progress continues to be made on the design of the program, which includes energy efficiency and renewable measures that can be promoted through incentives or financed under this program. Although several dependencies exist to determine an absolute launch date, including the passage of SB279, the current estimate is August 2010.

ABAG recently hired the consulting firm Bevilacqua Knight, Inc. (BK<sub>i</sub>) to outline the broad program design elements of the financing district. Definition of the program design elements along with market research results and estimated costs will lead to the development of a business case to test program viability.

The current target market for this program is low-rise (1-3 stories) residential buildings, but other building types may be considered in later phases. We expect a customer considering energy efficiency improvements to their home will have many options. As an example, the Sonoma County Energy Independence Program’s has identified over 20 home improvements that can reduce energy consumption. These improvements, listed below, provide a broad example of the types of available upgrades and will be considered as the list of eligible measures for the regional financing district is developed.

- High efficiency HVAC systems and HVAC system sealing
- Duct and home sealing
- Evaporative coolers
- Efficient natural gas storage water heaters
- Tankless water heaters
- Solar water heater systems
- Cool roof systems
- Reflective roofs and coatings

- Attic and wall insulation
- Reflective insulation or radiant barriers
- Whole house fans and attic fans
- High efficiency windows and glass doors
- Window filming
- Weather stripping
- Efficient skylights
- Solar tubes
- Additional building openings to provide additional natural light
- High efficiency lighting installation
- High efficiency pool equipment
- Electric vehicle plug-in stations
- Geothermal exchange heat pumps
- Solar thermal systems for pool heating

#### *Program Pathways to Entry*

The energy financing district seeks to provide customers with easy and flexible project selection options by packaging home energy improvements depending on their budget, goals, and energy needs. All options would start with some level of energy assessment based on the complexity of the project design, but financing is limited to building shell improvements. ABAG and PG&E will be performing a detailed market survey to determine if a three pathway approach is the most useful to customers and will adjust the program accordingly in light of the market survey results. In the interim, the following options represent current thinking on three possible pathways to enter the program:

#### Basic home energy upgrade

This pathway serves homeowners who are seeking a basic energy retrofit that will deliver net financial savings. Expected budget range would be \$5K-\$10K. The basic home energy upgrade would focus on the most cost-effective energy efficiency measures such as air sealing, attic insulation, lighting, and insulating the hot water heater system. These projects should deliver an average energy reduction of at least 20% and would not include major system replacements like HVAC or more costly improvements such as window replacement. The basic home energy upgrade can be combined with onsite renewables depending on the homeowner's goals for the project.

#### Advanced home performance

This pathway serves homeowners that elect to address specific energy systems and/or are motivated to achieve deeper energy savings (e.g. 20%-70%). These projects typically have a budget range of \$11K-\$40K and are usually triggered by the need to replace major systems (furnace, air conditioner, etc.) or as part of a remodeling project. This pathway would utilize existing Home Performance with ENERGY STAR, a national initiative of the U.S. EPA and U.S. DOE, providing a comprehensive whole-house approach to improving energy efficiency and comfort at home while helping to protect the environment and could be combined with onsite renewables depending on the homeowner's goals for the project.

### Onsite renewables

This pathway serves homeowners interested in solar electric or solar thermal technologies. These homeowners are comfortable financing projects with a budget range of \$20K-\$60K. Although not required, homeowners would be strongly encouraged to incorporate the basic home energy upgrade as a part of their solar project. This would protect consumers from paying for oversized and less cost-effective solar systems and would maximize societal and homeowner benefits. Due to the relatively mild climate in much of the ABAG service territory, many solar electric projects in this area result in substantial homeowner costs beyond current energy bill savings even with rebates. Other onsite renewable technologies (wind turbines, fuel cells, etc.) may be considered in the future but will not be included in this the first phase of program design due to their current higher net costs.

ABAG is also in discussions with SolarTech, an initiative of the Silicon Valley Leadership Group, to identify how this non-governmental organization can support the design of the program to address solar installation issues. A few areas that have been discussed include quality control standards, documentation for project tracking and audits, program applications related to solar, application approval criteria, products available for financing, installation criteria, certification of work completed, and coordination of solar and energy efficiency incentives. One issue regarding solar system installations that has been raised as a concern is the ability to expand a modular solar system at a later date if a customer's load increases. Based on discussions with SolarTech, a solar system does not need to be over-sized when it is first installed, even if a customer anticipates a future increased load, such as from a new plug-in hybrid car. Addressing solar issues such as this example will improve the program design. Partnerships on specific program aspects will continue to be explored.

### *Customer Financing Approval Criteria*

Once a customer expresses interest in the program, an application will be submitted for consideration. One of the items that will be reviewed for application approval is customer eligibility for the purpose of reasonable credit risk mitigation. While the energy financing district eligibility requirements are still being defined, Sonoma County Energy Independence Program has performed an analysis and identified the following seven eligibility requirements in their program application:

- Applicant(s) is/are legal owner of the property described in the Application (the "Property").
- Property is developed and located within Sonoma County. Mobile homes are not eligible.
- Property Owner is current on property taxes.
- Property Owner is current on mortgage(s). For commercial property, lender has given consent to SCEIP Financing;
- Property Owner is not in bankruptcy and the property is not an asset in a bankruptcy.
- There are no federal or state income tax liens, judgment liens or similar involuntary liens on the Property.

- Improvements costs are reasonable for the scope of the proposed project and to Property value.

ABAG will continue to analyze credit risk considerations as the energy financing district eligibility requirements are established.

#### *Program Financing Mechanism*

In order to finance energy efficiency and solar projects for customers through the energy financing district, a community facilities district must be formed. The Mello-Roos Community Facilities Act of 1982 authorizes property based financing for improvements of certain facilities. If Senate Bill 279 is signed into law this year, solar and energy efficiency improvements to or on real property and in buildings would also be authorized by this Act. Under the Mello-Roos Act, Section 53317(h) of the Government Code, a joint powers agency (the "JPA") is authorized to use the law to create a community facilities district. The Act outlines several distinct steps that the JPA must follow to set the district formation and financing processes in motion, including adopting resolutions and holding a public hearing. In addition to the process undertaken by the JPA, a public hearing in connection with the district's formation and proposed bond financing will also need to be held at least at the county level.

The ABAG Financing Authority for Nonprofit Corporations ("Authority"), as a JPA, has experience with property based financing. Since 1993 the Authority has offered its Special Assessment Bond Round-Up ("SABR") Program for the pooled financing and issuance of local assessment district and community facilities district bonds. To date, the Authority has brought 13 SABR Program issues to market aggregating nearly \$458 million. The JPA itself does not take on the obligation for repayment of any land-secured financings. Each underlying bond issue stands on its own credit meaning that there is no cross-collateralization or pooled credit aspect among jurisdictions. The JPA's role is strictly as a conduit, with repayments limited to amounts received.

Repayment of the bonds would be secured by property taxes collected by the County on the regular property tax bills sent to property owner/homeowners. Any such bonds would not be rated; however, the Authority's obligation to make payment on these bonds, as in all of its land secured securities, is strictly limited to property tax payments passed through by the County to the Bond Trustee. Neither ABAG nor its members take on any obligation to make payment on these securities.

Within this financing mechanism, the energy financing district will continue to refine program parameters for project approval.

#### *Division of Program Responsibilities*

ABAG and PG&E are jointly working on the design of the program. The following list provides a preliminary view of how the various tasks can be divided among the main implementing parties, but all are subject to revision.

Joint ABAG/PG&E. ABAG and PG&E will jointly develop the financing district program. In developing the program an emphasis will be placed on ensuring ease of use for the customer. Program viability will be tested through a market research/analysis and development of a business financial model. Joint tasks may include:

- Establish program goals, limitations, and strategy
- Select program administrator(s)
- Establish basic project eligibility criteria
  - Minimum and maximum amount that may be financed
  - List of approved technologies and improvements that can be financed
- Coordinate with community choice aggregation communities and municipal utilities

ABAG. ABAG will implement and maintain the community facilities district, coordinate with member agencies, and provide overall program oversight. Specific tasks may include:

- Provide oversight and direction
- Select financing strategy
- Arrange for bond sales
- Establish community facilities district. ABAG anticipates creating the District through its joint powers agency, the ABAG Financing Authority for Nonprofit Corporations
- Coordinate with trustee to process property tax payments to bondholders
- Coordinate with other member property tax financing programs in the Bay Area
- Monitor program and report routinely to participating local governments
- Information and outreach to local governments and their communities

Financial Administrator. The Financial Administrator will ensure financial resources are available to fund each project and work with the County Tax Offices to ensure proper processing of individual liens. The Financial Administrator will work under contract to the community facilities district and in close collaboration with the Program Administrator. Tasks may include:

- Secure interim financing for job payments
- Develop and manage application and approval processes
- Secure consumer consent to contract and lien
- Place property tax liens on participating properties
- Process payments to installers/contractors
- Arrange loan-loss fund source and operations
- Report status, results, and outlook regularly to all sponsoring authorities

Program Administrator / Process Manager. ABAG and PG&E will determine the most efficient and effective Program Administrator. The Program Administrator will have

primary responsibility for conducting initial site visits and feasibility analysis, tracking project implementation, conducting marketing campaigns, coordinating with contractors, processing rebates/incentives, and customer service. Tasks may include:

- Develop program implementation plan (Program Guidelines)
- Conduct telephone screenings, site visits, and project feasibility analyses
- Conduct energy savings modeling and estimation as required, including utility bill data acquisition and analysis
- Approve jobs for financing - report to Financial Administrator
- Maintain approved contractor lists, and monitor overall contractor activity
- Coordinate with other utility energy efficiency programs, as appropriate, including Local Government Partnerships and “Third Party” incentive programs
- Manage the processing of utility and state incentive payments for both energy efficiency and renewable project installations
- Develop and manage energy efficiency and solar project integration policies and procedures
- Develop various disclosure forms
- Monitor and assess individual job status
- Certify completion of projects
- Design and conduct marketing campaign and materials
- Set up and operate program web/phone information center
- Track and report energy and carbon savings to all stakeholders
- Customer service including customer care and assistance to assure adequate customer feedback, complaint, and dispute resolution process.
- Coordinate contractor training and certification process, as necessary
- Arrange local government staff training as needed (e.g. permitting issues)
- Provide ongoing contractor support systems (web, meetings, news, forum etc.)
- Coordinate continuously among participants and stakeholders
- Manage funding and budget for program administration

### **Market Research Plan**

ABAG in partnership with PG&E is conducting a market research study to determine the customer’s interest in participating in an energy financing district. The results of the study will iteratively inform program design and define target audience and outreach strategies. The study will be conducted in three phases and will utilize online surveys, focus groups and in-depth interviews. The research results are expected on a rolling basis starting in August and into the fourth quarter of 2009.

Phase one will include a program concept study which will identify which residents are most likely to participate in energy financing district and what levers will drive their participation. This phase will also determine the specific energy efficiency and solar upgrades that are in demand. Online surveys will be completed by a diverse range of residents in the ABAG service territory including a mix of income levels, types of homes, age of homes, and energy usage.

Phase two uses qualitative research methods such as focus groups and in-depth interviews to determine the value and benefits to participating in energy financing district. Results will determine what would prevent or encourage participation. This will allow the program design team to gain valuable feedback on the initial program design and ensure a customer-centric offering.

Phase three focuses on the profile of the target customer and is based on the results of the previous research phases. In-depth profiles of target customers will be created and include demographics, energy usage, living environment, psychographics, and media channels. Available marketing channels will be evaluated to most effectively reach target customers.

### **Business Case**

A business case will be developed for the energy financing district. Major components to the business case include a description of the product and/or service provided to customers, strategic business goals, market overview, strategies for positioning and for marketing and communicating the product/service, financial and risk analysis, exit strategy, and measurements for program success. The major components to the business case are expected to be completed by September 2009. Creating a business case is a necessary step for obtaining PG&E program approval. Once completed, the business case will be presented to PG&E and the ABAG Executive Board.

### **Legislative Update on SB 279**

The energy financing district concept is based on the financing mechanism that would be allowed by the passage of Senate Bill 279 (SB 279). The bill is based on the Mello-Roos Community Facilities Act of 1982, which allows a community facilities district to finance community improvements, and would amend this act to allow a district to finance energy efficiency and renewable energy improvements to or on real property. Passage of this bill is seen as critical to the creation of the energy financing district. Senator Hancock introduced SB 279 this year. The bill passed the Senate and the Assembly Local Government Committee. *The bill has been amended to incorporate water conservation.*

### **Next Steps**

ABAG and PG&E will continue working together to advance the program design, market research, and business case. Additionally, with the SB 279 amendment to include water conservation, ABAG will begin exploring a partnership with water districts to incorporate water elements into the program concept. Lastly, ABAG will continue to coordinate with other financing programs to ensure lessons learned and best practices are incorporated into the program design.

MEMO

**Submitted by:** Ezra Rapport, Deputy Executive Director

**Subject:** ABAG's Work Concepts Regarding the Sustainable Communities Strategy

**Date:** July 16, 2009

**Executive Summary** *(Brief narrative summary of issue or bullets outlining issue)*

The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) are currently working on the development of a work plan for the Sustainable Communities Strategy (SCS) under the provisions of SB 375. The SCS is a policy document required to be adopted as part of the next Regional Transportation Plan (RTP). The SCS/RTP includes land use and transportation policies and investments that address climate change, regional traffic congestion, and the reduction of carbon emissions from cars and light trucks in accordance with the regional targets to be established by the California Air Resources Board (CARB). The SCS work program has two fundamental components: an analysis of regional sustainability coupled with an extensive public participation effort.

**Recommended Action** *(Brief description of action needing approval or outcome proposed)*

None – Informational item

**Next Steps** *(Outline describing process/steps needed for implementing action)*

Upon incorporation of the Executive Board's input and in coordination with MTC and our partner agencies, staff proposes initial discussions commencing this fall with local jurisdictions, CMAs, and other key stakeholder entities to refine a potential SB375 public participation process and work plan based on guiding policies expected to be adopted by the Joint Policy Committee in September 2009.

**Attachments:**



## MEMO

To: ABAG Executive Board  
From: Ezra Rapport, Deputy Executive Director *ER*  
Date: July 16, 2009  
Subject: ABAG's Work Concepts Regarding the Sustainable Communities Strategy

### Summary

The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) are currently working on the development of a work plan for the Sustainable Communities Strategy (SCS) under the provisions of SB 375. The SCS is a policy document required to be adopted as part of the next Regional Transportation Plan (RTP). The SCS/RTP includes land use and transportation policies and investments that address climate change, regional traffic congestion, and the reduction of carbon emissions from cars and light trucks in accordance with the regional targets to be established by the California Air Resources Board (CARB).

The Sustainable Communities Strategy, as defined in Senate Bill 375, primarily encompasses transportation and land use planning, modeling, and outreach work by the MTC and ABAG. Preparing the SCS will require the significant involvement of, and discussion with local governments, transportation agencies and other stakeholders regarding the feasibility of alternative strategies to meet the target emissions. The SCS/RTP will also require the development of new tools to perform a comprehensive analysis of the relationship between land use patterns and transportation investments measures and policies. The SCS should be completed by the end of 2011 or early 2012 in order to influence the investment program included in the RTP. The RTP, including the SCS and investment program, will be adopted in winter 2013.

In the past, ABAG's Projections did not require an environmental impact report (EIR). The SCS is likely to require an EIR, either as part of the Regional Transportation Plan or separately. MTC and ABAG's legal counsels are analyzing the specific CEQA requirements of SB375.

ABAG and the other regional agencies have programs that address climate change issues that may be outside the scope of the SCS, and these programs can potentially make significant contributions in achieving climate change goals. To the extent possible, the policy objectives of regional and local government climate change programs and the development of the SCS should converge and reinforce each other.

The FOCUS program, a multi-agency effort, has laid a foundation for the SCS, by having local governments voluntarily identify Priority Development Areas (PDAs) within the region as opportunities to create higher-density development supported by transit. ABAG and MTC's goal is to promote public and private investment to implement PDA plans as one of the principal land use strategies of the SCS. Making progress with FOCUS within the SCS requires the investment of new and significant public resources, as well as assisting local governments in their planning efforts to overcome implementation barriers.

The ability of ABAG and MTC to provide a robust analysis and engagement strategy is highly dependent on available resources. SB 375 mandated certain documents and processes, but did not provide a funding source. The Legislature is currently considering SB 406, which would allow for MTC/ABAG to impose a vehicle registration fee of a maximum of \$2 to fund both local governments and the regional agencies to perform the work. At the time of this writing, the fate of SB 406 is not yet known. Staff is developing a work program with the other regional agencies that approaches SB 375 utilizing existing funding, with an eye towards how the program will be upgraded should additional resources be made available.

### **Scope of the Sustainable Communities Strategy**

The SCS brings together the Regional Transportation Plan developed by MTC with the land use forecasts and the Regional Housing Needs Allocation developed by ABAG. Historically, each of these efforts has been approached and developed independently of one another. Under SB 375, these programs will be integrated and interdependent. The current RTP, Transportation 2035, began this process by using an alternative land use scenario developed by ABAG and MTC. The SCS will require local governments and other partners to absorb and understand the opportunities related to the interconnections between these programs.

The Federal Clean Air Act, which SB 375 references, requires that the SCS be realistically attainable as part of the RTP. SB 375 also provides for the development of an Alternative Planning Strategy (APS), which is not constrained for feasibility under federal law like the SCS/RTP. Staff is proposing that the APS be defined as an increment or "delta" that builds upon and supplements the SCS to maximize the impact on future policy and investment decisions. The APS can identify a land-use pattern that might be achievable should expanded resources be available to further influence the region's future pattern of growth. The APS then acts as an advance planning function for the development of future SCS/RTPs. The SCS and APS together would then become a "vision" strategy.

The SCS work program has two fundamental components: an analysis of regional sustainability coupled with an extensive public participation effort.

#### *Analysis of regional sustainability*

Senate Bill 375 sets out a number of specific requirements for a region to use in developing the Sustainable Communities Strategy, as part of the Regional Transportation Plan. Much of this work has already been initiated by the FOCUS program and related implementation efforts, and

Projections 2009 (Building Momentum). This existing body of work acts as the foundation for future analysis and progress in meeting the objectives of the SCS. The regional agencies are required to

- Identify uses for various locations, residential densities, building intensities, and areas sufficient to house the region's entire population integrated with a transportation network and with transportation measures and policies.
- The population increase resulting from job growth, other in-migration, or natural increase, should be accommodated within the region's boundaries.
- Consider the best scientific information on resource and farming lands, state housing goals, and spheres of influence adopted by LAFCOs.
- Allow compliance with Clean Air Act conformity provisions.
- Quantify greenhouse gas reductions and any difference from ARB-set target

[Govt. § 65080 (b)(2)(B),(F),(G)]

In addition, “[t]he region’s existing and projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan.” (SB 375 Section 8, Section 65584.01 d (1) (c))

As described in the staff memo of May 21, 2009, ABAG and MTC are working on improvements to land use models, transportation models, and the ability of those models to work together. With concentrated effort by the staff of each agency, we expect to be able to begin to develop joint land-use and transportation scenarios in early 2011 that could be used to help shape the investment plans and the policy choices in the next Regional Transportation Plan.

MTC and ABAG staffs are restarting a Modeling Technical Advisory Committee that had been part of the Congestion Management Program. The committee made up of staff from the Congestion Management Agencies, MTC and ABAG would discuss technical transportation and land-use modeling issues as they relate to regional and local planning.

#### Public participation

SB 375 explicitly designates the charge to “**develop overall guidelines, create public participation plans, ensure coordination, resolve conflicts, make sure that the overall plan complies with applicable legal requirements, and adopt the plan for the region**” to the metropolitan planning organization. Furthermore, it quantifies the number of public hearings for the public and local elected officials, suggesting outreach to specific stakeholders, and prescribes specific components of engaging the public.

The public participation plan for the Sustainable Communities Strategy (SCS) will be developed jointly by MTC and ABAG, and as appropriate, with the Bay Area Air Quality Management District (BAAQMD) and the Bay Conservation Development Commission (BCDC). The following elements are under consideration:

- Agreement between MTC and ABAG on the principles of the public participation plan, committing resources for the development and implementation, and support of the process;
- Development of a solid multi-tiered plan that draws from best practices, and remains flexible to modification as necessary;
- Engagement with local governments as partners.

As the SCS will, among other things, constitute the land-use allocation element of the RTP, the public participation plan will need to be closely correlated to the outreach plan for the RTP infrastructure investment element – an outreach plan greatly expanded and strategically executed not just to comply with legal requirements but to align with the spirit of the law.

The adopted public participation plan must include efforts to encourage active participation of a broad range of stakeholder groups, consultation with Congestion Management Agencies (CMAs) and transit agencies, and workshops throughout the region to provide the public with information and tools necessary to establish a clear understanding of the issues and policy choices. The law requires urban simulation computer modeling to create visual representations of the SCS.

A successful public participation plan must actively engage local jurisdictions in the development of the SCS. Through participation in the FOCUS program, many cities and counties have demonstrated their support of compact development and they are the logical entities to directly engage residents of their jurisdictions. This engagement can signal their buy-in as partners in the SCS and will provide an opportunity for them to further explore the kind of future communities residents of their jurisdictions really want.

From a historical perspective, the public participation plan for the SCS will be greater in breadth and depth than any of previous involvement efforts coordinated by MTC or ABAG. Staff envisions that it must also be much more far-reaching and comprehensive than that required by statute. It is a tremendous opportunity to develop and execute a comprehensive, multi-tiered civic engagement program where communities can begin the process of reconnecting, and with diligent effort, identify solutions that address key areas of sustainability, adaptability, and resiliency that respond to the many challenges within the region.

ABAG staff has embarked upon extensive research into civic engagement and best practices and is developing a synopsis of methods suited to the public participation plan. Some of the approaches to be considered include:

- *Web Based Communication* - The web is a powerful medium for delivering information, especially in such a large and diverse region. MTC and ABAG could develop an interactive web site that provides general information, updates, status reports, document postings and accommodates stakeholder feedback and comments. Several companies have developed online engagement platforms around planning issues to assist governments in connecting with citizens. Online tools can also be used to survey participants on values and prioritization with respect to planning. For an example of high-quality work in this work, see the Chicago 2040 Plan. (<http://www.goto2040.org/>)
- *Multi-Tiered Engagement Plan* –SB 375 requires MTC and ABAG to engage a diverse set of interests including affordable housing, public transit, neighborhood and community

services, environmental sustainability, real estate development, business growth, and commercial property. To meet these and other federal mandates, an issue based, multi-tiered engagement plan is essential.

- *Pilot Cities* - MTC and ABAG could establish a trial public participation process by test cities as a "road test" by partnering with several cities on a pilot basis. This could provide an opportunity to identify problem areas of the engagement plan and make corrective measures before implementing the plan throughout the region. Pilot test cities could be chosen for their ability to engage with their citizens and champion the ideas behind the SCS. The cities would vary by geographic location, community size and development choices.
- *Sub-regional approach* - MTC and ABAG could identify sub-regions or corridors around which to organize the public participation process.

Staff recognizes the current fiscal constraints for local governments. Embarking on an advance planning exercise such as the SCS will be challenging. On the other hand, current market conditions create more opportunities for planning, due to the lack of development pressure and an easing of the strains of current planning. It would be ideal to have these plans in place at the time the economy starts to rebound.

### **CEQA and an EIR for the Sustainable Communities Strategy**

SB 375 provides various levels of CEQA relief to housing and mixed-use development projects based on a number of criteria, including consistency with an SCS. One way to provide a framework for determining "consistency" is to prepare a separate programmatic environmental impact review (EIR) for the SCS in addition to the EIR usually prepared for the RTP investment plan. Further, it might also be possible to craft a programmatic EIR for the SCS that others can 'tier off.' For example, a neighborhood specific plan, infrastructure project or development project might use the EIR for the SCS in their environmental compliance documents - thus streamlining the process.

The legal departments of ABAG and MTC will work with the program staff to assess the value that a 'tierable' programmatic EIR for the SCS might have for the region, its feasibility and alternative approaches. A broad range of interests will be consulted in this process, including local governments, potential users of a programmatic EIR, CEQA practitioners, the environmental community, community-based organizations, and social equity and other advocacy groups. A number of technical and legal issues, including the relationship to the EIR presently prepared for the RTP, will also need to be identified and resolved. Work to resolve these issues needs to occur as soon as possible, as it will clearly affect the manner in which we prepare the SCS. ABAG's counsel will be working with MTC's counsel throughout the process.

Our goal is not to further cloud the CEQA process through the adoption of the SCS. In fact, this may be an opportunity to use the SCS to assist the region with the task of complying with green house-gas-emissions component of CEQA. However, no project, at any level, will be exempted from CEQA as a result of ABAG and MTC adopting a 'tierable programmatic EIR for the SCS.

**Next Steps**

Upon incorporation of the Executive Board's input and in coordination with MTC and our partner agencies, staff proposes initial discussions commencing this fall with local jurisdictions, CMAs, and other key stakeholder entities to refine a potential SB375 public participation process and work plan based on guiding policies expected to be adopted by the Joint Policy Committee in September.

# LEGISLATION & GOVERNMENTAL ORGANIZATION COMMITTEE

Committee Chair: Councilmember Carole Dillon-Knutson—City of Novato

Committee Vice Chair: Supervisor Mike Kerns—County of Sonoma

Staff: Patricia Jones – Assistant Executive Director 510/ 464-7933; FAX 510/464-7970; [PatJ@abag.ca.gov](mailto:PatJ@abag.ca.gov)  
 Kathleen Cha – Senior Communications Officer 510/ 464-7922; [KathleenC@abag.ca.gov](mailto:KathleenC@abag.ca.gov)

**Thursday, July 16, 2009 – 3:30 p.m. to 5:00 p.m.**

ABAG Large Conference Room B, MetroCenter, 101 Eighth Street, Oakland

## AGENDA\*

1.	<b>OPEN AGENDA</b> Committee members may raise issues for consideration; members of the public may speak.	Information/ Action
2.	<b>APPROVAL OF MINUTES</b> Committee will review and approve the minutes of the May 21, 2009, L&GO meeting.	Information/ Action
3.	<b>2009 LEGISLATIVE SESSION—BILLS FOR CONSIDERATION**</b> Review the following new bills for consideration: <b>AB 744 (Torrico) Transportation: Toll Lanes—Express Lane Network</b> <b>AB 881 (Huffman) Sonoma County Regional Climate Protection Authority: greenhouse gas emissions</b>  <i>Update status of bills previously considered, specifically</i> <b>SB 406 (DeSaulnier) Land Use: Environmental Quality</b>  <i>Review amended bills previously considered for any affect on support/oppose/watch positions taken:</i> <b>AB 18 (Knight) Local Government: City Councils</b> <b>AB 46 (Blakeslee) Energy: Energy Conservation Assistance</b> <b>AB 155 (Mendoza) Local Government—Bankruptcy</b> <b>AB 814 (Krekorian) Firearm Surrender Process and Procedure</b> <b>AB 962 (DeLeon) Ammunition</b>	Information/ Action
4.	<b>REPORT FROM YOUTH GUN VIOLENCE TASK FORCE ON MODEL ORDINANCES AND RESOLUTIONS</b> Review and discussion of local governments' adopting local ordinances and resolutions addressing possession/selling of guns and ammunition as a region-wide effort to address youth gun violence.	Information/ Action
5.	<b>ADJOURNMENT</b> Next meeting is scheduled for <b>September 17, 2009.</b>	Action
	<b>Agenda and other written materials are available at ABAG/Frontdesk, 101 8<sup>th</sup> Street, Oakland, or at <a href="http://www.abag.ca.gov/meetings">http://www.abag.ca.gov/meetings</a> -- Legislation and Governmental Organization Committee</b>	

\* The Committee may take any action on any item on the agenda

\*\* California Bill Texts and actions can be read and printed out from state website: [www.leginfo.ca.gov](http://www.leginfo.ca.gov).



**LEGISLATION**  
**2009 State Legislative Session**  
**Legislation & Governmental Organization Committee**  
**July 1, 2009**

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary
<b>NEW BILLS</b>					<b>Roll Call/Shutdown Legislation Summary indicates change movements</b>

Bills to be reviewed are listed in numeric order with Assembly bills listed first, followed by Senate bills

**ASSEMBLY BILLS**

<b>AB 18 Knight</b>	<b>Local Government: City Councils</b>	<p>SEN: passed            SEN Local Government Committee—placed on consent calendar</p> <p>ASM:            Concurrence in SEN amendments pending  <u>ab 18 knight</u></p>	<p>Watch</p> <p>After amended, LCC support</p>	<b>Oppose</b>	<p>Amended 3/17, 4/27, 6/10: Extends the amount of time that a city council has to fill a vacancy in an elective city office from 30 days to 60 days. Would require the city council to, within 60 days of a vacancy in an elective office, fill that vacancy by appointment or call a special election to fill the vacancy.</p> <p><i>Originally: Would authorize a city council to leave a seat on the city council vacant for up to one year or the next general election, whichever comes first: if the remaining city council members cannot agree up an appropriate appointee and the remaining city council members can still form a quorum.</i></p> <p><i>Existing law requires a city council to, within 30 days of a vacancy in an elective office to fill that vacancy by appointment or call a special election to fill the vacancy.</i></p>
<b>AB 46 Blakeslee</b>	<b>Energy: Energy Conservation Assistance</b>	<p>SEN: Energy, Utilities &amp; Communications            Hearing 7/2/09  <u>ab 46 blakeslee</u></p>	<p>Support concept</p>	<b>Watch</b>	<p>Amended 3/31, 6/22: This bill extends the sunset dates, from January 1, 2011 to January 1, 2020, for the Energy Conservation Assistance Account (ECAA) and the Local Jurisdiction Energy Assistance Account (LJEEAA), each administered by the California Energy Commission (CEC): continues local assistance energy programs nine more years.</p> <p><i>Originally: Would extend the operation of the State Energy Conservation Assistance Account to January 1, 2015: a continuously appropriated account in the General Fund that</i></p>

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 2
AB 55 Jeffries	Water Supply Planning	ASM: Parks and Wildlife Committee <u>ab 55 jeffries</u>	Watch	Watch	provides grants and loans to local governments and public institutions to maximize energy use savings. In existing law will end January 1, 2011.  <i>Is now being considered a Two-Year bill</i> Existing law requires a city or county that determines a project is subject to CEQA to identify any public water system that may supply water for the project and request those public water systems to prepare a water supply assessment. This bill would revise the definition of "Project" to include within the scope of the definition and water supply requirements related to projects the following: specified business, commercial, hotel or motel, industrial, manufacturing, and mixed use developments with an equivalent water demand similar to a 500 dwelling unit project.	
AB 68 Brownley	Solid Waste: Single-use Carryout Bags	ASM: Appropriations Hearing 5/6/09 Postponed by committee <u>ab 68 brownley</u>	Watch	Watch, but encourage bag giveaway programs	Amended 3/31 and 4/23: <i>Amended definition of "Reusable bag" to mean a bag that is specifically designed and manufactured for multiple reuse, meaning 50 or more uses.</i> This bill would, on and after July 1, 2010, prohibit a store, as defined, from providing a single-use carryout bag to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of sale. The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and would require a store to remit the single-use carryout bag fees, less a specified amount, to the State Board of Equalization for deposit in that fund. The bill would prohibit a store from distributing a single-use carryout bag that is not a plastic or compostable carryout bag that meets specific requirements. recommendations to further encourage the use of reusable bags.	
AB 87 Davis	Single-use Carryout Bags: Environmental Effects—Mitigation	ASM: Appropriations  In committee; hearing postponed by Committee <u>ab 87 davis</u>	Watch	Support 5/21/09  Watch, but encourage bag giveaway programs	Amended 3/18 and 4/27: This bill restricts grocery and convenience stores from providing single-use carry out bags to their customers. Specifically: 1) As of July 1, 2010, prohibits grocery and convenience stores and pharmacies, as defined, from providing single-use carryout bags, to customers without charging a sales tax-free fee of 25 cents per bag (the Bag Pollution Cleanup Fee). 2) Exempts from the fee customers participating in certain low-income assistance programs. 3) Allows stores charging the fee to retain a portion of the amount generated by the fee to pay for implementation of the requirements of the bill, including educational programs and donation of reusable bags to community groups, nonprofits, and similar entities. 4) Creates the Bag Pollution Fund, available for annual legislative appropriation to the Integrated	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 3
<b>AB 155</b> <b>Mendoza</b>	<b>Local Government: Bankruptcy Proceedings</b>	<b>SEN Local Government Committee Hearing 7/8/09</b>  <b>ab 155 mendoza</b>	Oppose CSAC Oppose LCC Oppose	<b>Oppose</b>	<p><b>Waste Management Board for state programs for litter cleanup and source reduction and for grants to cities and counties for those same purposes.</b></p> <p>Originally: Would on and after July 1, 2010, prohibit a store from providing a single-use carryout bag, including a green carryout bag, to a customer unless the store charges a fee of not less than 25 cents per bag at the point of sale. Would establish a Bag Pollution Fund and by January 31, 2011, would require stores that collect the single-use carryout bag fees to remit the fees to the State Board of Equalization for deposit in the fund, and do so on a quarterly basis. Would require the manufacturer of single-use carryout bags to develop educational materials to encourage the reduction, reuse and recycling of single-use bags for those store required to comply with program. Would require a biennial report to legislature in coordination with other state agencies and stakeholders on the effectiveness of the program and recommendations to further encourage the use of reusable bags.</p>	
<b>AB 280</b> <b>Blakeslee and Ma</b>	<b>California Earthquake Authority: Retrofit Programs—Grants</b>	<b>ASM Appropriations</b>  <b>Held under Submission ab 280 blakeslee</b>	Support Concept	<b>Support in concept</b>	<p>Prohibits a local public entity (defined as a county, city, district, public authority, public agency) from exercising its rights under applicable federal bankruptcy law unless granted approval by the California Debt and Investment Advisory Commission (CDIAC), under CDIAC's terms and conditions.</p> <p>Would authorize the 3-member governing Board (Governor, Treasurer, Commissioner) to create a program, administered by the Earthquake Authority, to access and dispense federal stimulus dollars for purposes of retrofitting multiunit, soft-story buildings. Includes parameters of a city or county having adopted by ordinance a retrofit program, and other stipulations.</p>	
<b>AB 338</b> <b>Ma</b>	<b>Transit Village Developments: Infrastructure Financing</b>	<b>SEN Local Government Hearing 7/1/09</b>  <b>ab 338 ma</b>	Watch	<b>Watch</b>	<p><b>Author's Amendments 6/25/09:</b> Would recast the area included in a transit village plan to include all land within not more than ½ mile of the main entrance of a transit station. Would eliminate the requirement for voter approval for the formation of an infrastructure financing district, adoption of an infrastructure financing plan, and an issuance of bonds <b>for the purpose of implementing a transit facility. Allows local officials to divert property tax increment revenues to pay for public facilities and amenities within transit village development districts. Includes other stipulations about public benefit and affordable housing. Would become operative only is AB 1158 and this bill are both</b></p>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 4
AB 349 Silva	State Mandates	SEN Budget and Fiscal Review Com. <u>ab 349 silva</u>	Support Concept CSAC Support	Support	<p><i>chaptered and become effective on or before January 2, 2010 and this bill is chaptered last.</i></p> <p>Requires, beginning January 1, 1012, the administration o produce draft trailer bill language with its January budget proposal that repeals mandates that are proposed to be suspended for a least the third consecutive year. Specifically, requires the Director of Finance to provide to the Legislature all proposed statutory changes necessary to repeal reimbursable state mandates that have been suspended for three consecutive years in the Governor's Budget.</p> <p>Authorizes the Bay Area Toll Authority (BATA) to develop a Bay Area Express Lane Network (network). Specifically: This bill would authorize the Bay Area Toll Authority to acquire, administer, and operate a Bay Area Express Lane Network on state highways within the 9 Bay Area counties pursuant to a development plan recommended by the Bay Area Express Lane Network Project Oversight Committee, which the authority would be required to establish. -- would authorize the authority to establish the fee structure for use of the express lanes and would require a public hearing in that regard. --would authorize the authority to determine the types of vehicles that may use the lanes. --would provide for agreements between the authority and the Department of Transportation and the Department of the California Highway Patrol. --would require revenues from the express lanes to be deposited in the Bay Area Express Lane Network Account, which the authority would be required to create, and would authorize the authority to issue revenue bonds for the express lane program. --would require the Sunol Smart Carpool Lane Joint Powers Authority, the Alameda County Congestion Management Agency, and the Santa Clara Valley Transportation Authority to enter into agreements with the Bay Area Toll Authority by January 1, 2011, to provide for the transfer of their rights and obligations relative to HOT lane projects to the Bay Area Toll Authority. The bill would enact other related provisions.</p>	
AB 744 Torrice	Transportation: Toll Lanes— Express Lane Network	SEN Transportation and Housing Hearing 717 <u>ab 744 torrice</u>	Support			
AB 782 Jeffries	Regional Transportation Plans: Sustainable Communities Strategies	ASM Natural Resources Committee Last action:	Watch	Watch	<p>The bill outlines a number stipulations regarding what happens after Sustainable Communities Strategy or alternative planning strategy (resulting from SB 375 requirements) is accepted: stipulations on project approval, adding commercial builders/business community to a business advisor committee to be created by MPOs, extending CEQA exemptions, and states</p>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 5
AB 814 Krekorian	Firearm Surrender Process and Procedure	4/27 Hearing cancelled at request of author <u>ab 782 jeffries</u> SEN Public Safety Com <u>ab 814 krekorian</u>	Support concept	No Position—need clarification	<p>Legislative intent to enact legislation to resolve conflicts with scheduling of new housing element updates and adoption of regional transportation plans.</p> <p><b>Amended 4/13, 6/1:</b> This bill would establish a procedure for <i>a defendant who owns, has possession, custody, or control of a firearm</i>, to sell the firearm to a firearms dealer or relinquish the firearm to a law enforcement agency in order to comply with existing prohibitions. The procedure would in part require the defendant to disclose whether the defendant owns or has possession, custody, or control of any firearms and to list those firearms. The bill would provide procedures for persons in or out of custody to relinquish their firearms, including designating a law enforcement agency or a person as the defendant's <i>designee</i>, and would require the defendant or the defendant's designee to file a form showing, among other things, the date the firearm was relinquished. Failure to timely file the form would be an infraction punishable by a fine not exceeding <b>\$500</b>.</p> <p>This bill would urge local law enforcement agencies to obtain a secured mailbox from the Department of Justice in order to receive information from the Prohibited Armed Persons File, and would encourage review of the file in connection with the relinquishment of firearms by defendants subsequent to conviction, as specified.</p> <p><i>Originally: Would establish a procedure for defendants to sell firearm to a firearms dealer or relinquish the firearm to a law enforcement agency. Require the defendant to disclose, under penalty of perjury, whether the defendant owns or has possession or custody or control of any firearms and to list those firearms. Would provide procedures for them to relinquish their firearms.</i></p>	
AB 881 Huffman	Sonoma County Regional Climate Protection Authority: Greenhouse Gas Emissions	SEN Transportation and Housing  Hearing 7/7/09 <u>ab 881 huffman</u>	Support		<p><b>Creates, until December 1, 2015, the Sonoma County Regional Climate Protection Authority (Authority) to implement programs and projects to comply with statewide or federal greenhouse gas emission standards. Provides that the Authority is a public instrumentality governed by the same board as that governing the Sonoma County Transportation Authority (SCTA). However, the authority is a separate entity from the Sonoma County Transportation Authority. The Authority, in cooperation with local agencies that elect to participate, may perform coordination and implementation activities, within the boundaries of Sonoma County, to assist</b></p>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 6
AB 1084 Adams	Local Planning: Development Projects--Fees	Re-referred to SEN Appropriations Committee  Hearing 7/6/09	Watch	Support	<p>those agencies in meeting their greenhouse gas emission reduction goals.</p> <p>Amended 4/13/, 4/27/ 4/28, 6/10, 6/26: This bill provides a time frame for notice relating to an increase or change in fee levied under the Mitigation Fee Act and establishes procedures for requesting an audit of those fees.</p> <p><i>(Existing Law: Authorizes a local agency to charge a variety of fees, dedications, reservations, or other exactions in connection with the approval of a development project, as defined. Provides, under the Mitigation Fee Act, that in any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency is required to determine how there is reasonable relationship between the amount of the fee and the cost of public facility or portion of the public facility attributable to the development project on which the fee is imposed fees.) Specifically, the bill would:</i></p> <ol style="list-style-type: none"> <li>1) Require a local agency that is a city, county, or city and county to mail notice of the time and place of the meeting that will be held regarding adoption of a new fee or increasing an existing fee under the mitigation fee act.</li> <li>2) Require that the mailing, which must be sent 14 days prior to the hearing, include a general explanation of the matter to be considered and a statement of the proposed costs.</li> <li>3) Provide that any written request for mailed notice is valid for one year and the legislative body of the city, county, or city and county may establish a reasonable annual charge for sending these notices.</li> <li>4) State that at least 14 days prior to the meeting, a local agency that is a city, county, or city and county shall make available to the public the data indicating the amount of cost or estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities.</li> <li>5) Prohibit any new or increased fee adopted by a local agency that is a city, county, or city and county from going in to effect until 60 days after the final adoption, unless otherwise provided in law.</li> <li>6) State that any person can request an audit in order to determine whether any fee or charge levied by a local agency that is a city, county, or city and county exceeds the amount reasonably necessary to cover the cost of any product, public</li> </ol>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 7
AB 962 DE LEON	Ammunition	SEN Public Safety Committee Hearing 7/2	Support in Concept	Support with amendments	<p>facility, or service provided. <u>Would also require the local agency to retain an independent auditor only if the person requesting the audit deposits with the local agency the amount of the agency's reasonable estimation of the cost of the audit.</u></p> <p>7) Specify that any costs incurred by a city, county, or city and county by having an independent audit conducted may be recovered from the person who requests the audit.</p> <p>8) Specify that the oversight of local agency fees is of statewide concern, and therefore, this measure shall apply to charter cities.</p> <p>Originally: Would revise the definition of "fee" that a local agency can charge in connection to the approval of a development project to mean a "charge or other exactions, including a dedication, reservation, set-aside, or contribution of real or personal property or services, including a monetary exaction other than a tax or special assessment that is charged by a local agency, including a local agency that does not itself approve the development project, to the applicant in connection with the development project or as a condition of approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project." "Public facilities" would be defined to include public improvements, public services, community amenities, and measures intended to mitigate or alleviate the effects of the development project, whether or not owned or controlled by a public agency. Also stipulates that regarding the fees/amount, it would need to be justified prior to imposing the fee how there is a reasonable relationship between the fee and the cost of the public facility/or portion. Includes also a series of stipulations on the process, timing, and scope.</p>	Page 7
AB 962 DE LEON	Ammunition	SEN Public Safety Committee Hearing 7/2	Support in Concept	Support with amendments	<p>Amended 6/1, 6/22: Would require the Department of Justice to maintain additional info relating licensed handgun ammunition vendors; require starting 7/1/10 not person shall sell or transfer more than 50 rounds of handgun ammunition in any month unless a handgun ammunition vendor; request background clearance of employees, store handgun ammunition safely and securely away from purchasers, maintain records, and require handgun ammunition be sold in face to face transactions so that the vendor can confirm identity of purchaser and record that information, obtain a thumbprint and other info from purchaser.</p> <p>--would provide that a person enjoined from engaging in activity associated with a criminal street gang, as specified, would be prohibited from having under his or her possession, custody, or control, any ammunition. Violation of these</p>	Page 7

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 8
					<p>provisions would be a misdemeanor.</p> <p>-- would prohibit supplying or delivering, as specified, handgun ammunition to prohibited persons, as described, by persons or others who know, or by using reasonable care should know, that the recipient is a person prohibited from possessing ammunition or a minor prohibited from possessing ammunition, as specified. Violation of these provisions is a misdemeanor with specified penalties.</p>	
AB 1342 Evans	Local Taxation: Income Taxes— Vehicle License Fees	<b>ASM Revenue &amp; Taxation Com</b>  <b>No movement; hearing cancelled at request of author</b>	Support CSAC Support	<b>Support</b>	<p>Authorizes counties, under specified circumstances, to adopt a local personal income tax (PIT), a local vehicle license fee (VLF), or both: 1) Contains legislative findings noting that:</p> <p>a) Proposition 13 has reduced local property taxes by approximately 50%;</p> <p>b) In response to the enactment of Proposition 13, the state has provided local governmental agencies with increased amounts of state funds to maintain police, school, and other local services;</p> <p>c) Proposition 13 has resulted in increased state control and decreased local control with respect to the provision of local governmental services;</p> <p>d) The state is experiencing great difficulty in providing state funds to maintain local governmental services at historical levels; and,</p> <p>e) It is appropriate and necessary to shift some authority, control, and responsibility back to local governmental agencies to allow those agencies to determine the level of services appropriate for their citizens.</p> <p>--Provides that, notwithstanding existing law, the board of supervisors of any county may, by ordinance, place on the ballot either or both of the following for consideration by the voters in accordance with all constitutional and statutory requirements: A local PIT; and/or, a local license fee on any vehicle, registered within the county in which the local license fee is imposed, that is subject to registration under the Vehicle Code and on which a VLF is imposed under existing law.</p> <p>--Provides that a local VLF shall be subject to the following conditions: a) The aggregate license fee rate imposed by both the state and county on any vehicle shall not exceed 2% of the vehicle's market value;</p> <p>b) The local VLF shall be assessed and collected in the same manner as the fee imposed by state law;</p> <p>c) The local VLF shall be administered by the Department of Motor Vehicles (DMV); and the DMV shall transmit all revenues, less its costs of administration and any refunds, to the county in</p>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 9
AB 1520 Evans	State Watershed Program	ASM Appropriations Com Held under Submission ASM Referred to Appropriations Com.	Support concept CSAC Support Support CSAC Support LCC Support	Support Concept but want to know about funding Support	which the fee is imposed. Establishes a Statewide Watershed Program as a voluntary program in the Department of Conservation to provide assistance and funding to local community-based efforts in the conservation, protection, and restoration of the state's watersheds. Amended 6/26 to add "city and county, to those authorized to impose a special tax. Proposes a constitutional amendment to change the 2/3 voter approval requirement for special taxes to, instead, authorize a city, county, or special district impose a special tax with the approval of 55% of its voters voting on the tax. Would lower to 55% the voter approval threshold for a city, county, city and county to incur bonded indebtedness.	
ACA 9 Huffman	Local Government bonds: Special Taxes—voter approval					
SB 7 Wiggins	SENATE BILLS Renewable Energy Sources:— Net Metering (Feed-in Tariff reference removed)	SEN Second Reading	Support concept	Support if amended to provide better rates/credits to individual generator	Amended 5/5: This bill would require the electricity distribution utility or cooperative to allow the eligible customer-generator to apply net surplus electricity, as defined, as a credit for kilowatt hours consumed during one, or both, of the two following 12-month periods. This bill requires utilities to compensate customers that use net metering for any generation in excess of their load or, for customers on time of use rates any net dollar value, on an annual basis, or to roll that excess generation over, on a kilowatt hour basis, to the next 12-month cycle. The compensation rate would be set by the CPUC at a rate no less than the MPR.	
SB 12 Simitian	Sacramento-San Joaquin River Delta, Clean Drinking Water, Water Supply Security, and Environmental Improvement 2009	ASM Water, Parks and Wildlife Com Hearing 7/7	Watch	Watch	Amended 5/5, 6/18: Delta Ecosystem and Water Council is established to advance the coequal goals of restoring the Delta ecosystem and creating a more reliable water supply in California. Defines a seven member board of directors. California Delta Ecosystem and Water Plan exclusive authority to determine consistency of any project proposed or approved by a state agency or local government. Schedule due August 1, 2010, for preparing and adopting the plan per-acre-foot fee on water diversions within the Delta watershed, and a fee on any water conveyed through or around the Delta. Originally: Would authorize for funding the Act issuance of bonds in amount of \$6 million for voter approval. Would establish in state government the Delta Water and Land Use Authority, prescribe composition of its Board of Directors, and grant to the Authority a broad range of powers relating to preservation of the Delta ecosystem and the delivery of a reliable state water supply. Would authorize the Authority to contract to design, construct and own one or more facilities to move water	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 10
SB 27 Hancock	Local Agencies: Sales and Use Tax--Reallocation	Chaptered 6/5/09 Chapter 4, Statutes of 2009	Support Concept CSAC Support LCC Support	Support	<p><i>from the Sacramento River to federal and state pumping facilities. The Authority would succeed to the powers and duties of the California Bay-Delta Authority. Would establish within the California Coastal Commission, the Delta Watershed Conservancy. Would subject any approval by a city or county in specified zones of the Delta, and certain lands adjacent to the Delta to review by the Delta Protection Commission, and require the Authority to adopt or reject these land use decisions of the Commission. Other fee provisions included.</i></p> <p>The bill would prohibit a city, county, or city and county, on or after the bill's effective date, from entering into any form of agreement or taking any action that would result, directly or indirectly, in the payment, transfer, diversion or rebate of any amount of Bradley-Burns local tax proceeds to any person for any purpose when:</p> <p>--The agreement results in a substantial reduction in the amount of Bradley-Burns tax proceeds received by another local agency from a retailer within that other local agency;</p> <p>--and the retailer continues to maintain a physical presence and location within that other local agency. This bill has a urgency clause that means it would be immediately enacted after passed, signed and chaptered.</p>	
SB 31 Pavley	California Global Warming Solutions Act of 2006: Revenue Allocations	SEN Inactive file Placed on inactive file at request of author	Watch	Watch	<p>Would require that revenues collected due to compliance mechanisms adopted by the State Air Resources Board also be deposited in the Air Pollution Control Fund. Specified uses of the revenues collected would fund renewable energy and energy efficiency programs to reduce greenhouse gas emissions (particularly programs focusing on low-income consumers); for investments in emission reduction technologies; and for green jobs development and training that will reduce greenhouse gas emissions.</p>	
SB 279 Hancock	Local Government: Community Facilities Districts	ASM: Referred to Local Government Committee	Support	Support	<p><b>Amended 4/13, 4/21, 6/23: Adds water conservation to what can be financed:</b> Would authorize a community facilities district to finance and refinance the acquisition, installation, and improvement of energy efficiency and renewable energy improvements to or on real property and in buildings. Includes some provisions for establishing a community facility district and procedure for incurring bonded indebtedness.</p>	
SB 406 DeSaulnier	Land Use: Environmental Quality	SEN Appropriations	Support	Support	<p><b>Amended 5/28, 6/23--highlights of amendments:</b> Would change the designated membership of the Planning Advisory and assistance council and would require that the council work with the Strategic Growth Council, regional agencies, and cities and counties to facilitate the implementation or regional blueprint plans. Would require the council to develop and propose recommendations to specified state agencies to facilitate coordination between regional blueprint plans and state growth and infrastructure plans and</p>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 11
SB 457	Creation of Delta Stewardship	ASM Water,	Watch	Watch	<p>programs that facilitate implementation of regional blueprint plans.</p> <p>--Would add the air district to MPO, council of governments, county transportation commission, subregional council of governments to those jointly preparing SCS, and</p> <p>--Allows an MPO, a COG, or a county transportation commission and a subregional COG jointly preparing a subregional SCS, to impose a surcharge of \$1 or \$2 on a motor vehicle registered to an owner with an address in its jurisdiction.</p> <p>--Provides that a resolution by the MTC or ABAG to impose the surcharge must be jointly adopted by resolution of both entities, and the revenue from the surcharge shall be divided in accordance with an agreement between these two entities.</p> <p>--Provides that the surcharge shall be applied to an original vehicle registration occurring on or after six months following the adoption of the resolution by the MPO, COG, or a county transportation commission and a subregional COG jointly preparing an SCS, and to a renewal of registration with an expiration date on or after that six-month period.</p> <p>--Provides that all revenue received by the imposition of a surcharge shall be used solely to develop and implement an SCS or a regional blueprint plan to identify land use strategies to reduce the use of motor vehicles in its jurisdiction and thereby reduce emissions into the environment from motor vehicles.</p> <p>--Provides that if the surcharge exceeds \$1, all amounts above \$1 in a jurisdiction with a population greater than 300,000 shall be used to provide grants to cities, counties, and cities and counties for planning and projects related to the implementation of a regional blueprint plan.</p> <p><i>Original bill language:</i>  <i>This bill authorizes regions to impose a surcharge on vehicle registrations to pay for regional land use planning activities. This bill also makes changes to the membership and duties of the Office of Planning and Research's Planning Advisory and Assistance Council. Allows an MPO, a COG, or a county transportation commission and a subregional COG jointly preparing an SCS to impose a surcharge of up to \$2 on vehicles registered in its jurisdiction to fund the development and implementation of an SCS or a regional blueprint plan to identify land use strategies to reduce the use of motor vehicles and thereby reduce emissions into the environment.</i></p>	Amended 4/13, 5/5, 6/1, 6/30:

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 12
Wolk	Council for Sacramento-San Joaquin Delta	Parks and Wildlife Com. Hearing 7/7			<p>Amendments define the Commission membership to 15. Five members would be from the each of the five counties within the delta. One member is from the County of Contra Costa or the County of Solano, on a rotating basis.</p> <p>Provides that a comprehensive resources management plan will be completed by July 1, 2011. 180 days from that date, all local governments shall submit to the commission proposed general plan amendments and land use elements to make their general plans consistent with the resources management plan with respect to land use within the primary zone. Any amendments, changes, or updates to those plans or elements shall be submitted to the commission.</p> <p>No additional development shall occur in the primary zone of the delta unless the relevant proposed amendment to a local government's general plan is determined to be consistent with the resources management plan Establishes Delta Investment Fund.</p> <p><i>Formerly, Creates a 9-member Delta Stewardship Council and deletes section on establishing the Delta Conservancy. The bill would require the Delta Protection commission to revise all of its plans and policies to be consistent with the Delta Stewardship Plan, to review and certify all city and county general plans for consistency with the resource management plan and the Delta Stewardship Plan, to exercise appeal authority over actions taken by a local government or other local agency in the primary zone, to review, hold public hearings and receive testimony, and provide recommendations to the council on all proposed projects subject to approval by the council, and develop a regional economic development plan. The bill would require the council to determine appeals from the commission on water conveyance and storage project decisions.</i></p>	
SB 458 Wolk	(New title) Conservancies: Sacramento-San Joaquin Delta Conservancy.	ASM Water, Parks and Wildlife Hearing 7/7	Watch	Watch	<p><b>Amended 4/2, 62/ 6/22:</b> Sacramento-San Joaquin Delta Conservancy Act Undertake various activities related to the Delta, as defined, and Suisun Marsh, as defined, including supporting efforts that advance both environmental protection and the economic well-being of Delta residents, and undertaking efforts to enhance public use and enjoyment of lands owned by the public. The bill would prescribe the management, powers, and duties of the conservancy.</p> <p><i>Within two years of hiring an executive director, the board shall create and adopt a strategic plan to achieve the goals of the conservancy. The plan shall describe its interaction with local, regional, state, and federal land use, recreation, water and flood</i></p>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 13
					<p><i>management, and habitat conservation and protection efforts within and adjacent to the Delta. The plan shall establish nonvoting members, appointed or designated as follows: One member from CCC and one from Solano County</i></p> <p>Formerly: deletes language about Conservancy activities that said “including monitoring projects within the watershed of the delta, providing stewardship, and coordinating with other delta governance entities” to now read the purpose of the Conservancy is to “support efforts that advance both environmental protection and the economic well-being of Delta Residents, and cooperating with other Delta governance.”</p> <p>This bill would establish the Sacramento-San Joaquin Delta Conservancy to undertake various activities related to the Delta, as defined. The bill would prescribe the management, powers, and duties of the conservancy. The bill would create the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury. Moneys in the fund would be available, upon appropriation, for the purposes of the conservancy.</p>	
<p><b>SB 488</b> <b>Pavley</b></p>	<p><b>New title: Energy Usage Information</b></p> <p><b>Energy: Energy Efficiency Financing</b></p>	<p><b>ASM Utilities &amp; Commerce Committee</b></p> <p>Hearing 7/6</p>	<p>Support in Concept</p>	<p><b>Support</b></p>	<p><b>Amended 4/14, 5/5, 5/20, 5/28, 6/15:</b></p> <p><b>Energy Usage Disclosure Pilot Program :</b> Create a pilot program by each electrical corporation and each gas corporation <i>with more than 55,000 residential customer service connections that does not already have such a program, to adopt a pilot program to disclose information documenting the amount of energy used by the metered residence compared to similar residences in the subscriber’s geographical area and provide information to those subscribers on energy saving strategies or programs available.</i></p> <p><i>Formerly, This bill would require the commission, on or before July 1, 2010, to require each electrical corporation and each gas corporation to adopt a pilot program to disclose, not less frequently than quarterly, on the billing statement of a residential subscriber, information documenting the amount of energy used by the metered residence compared to similar residences in the subscriber’s geographical area. The bill would require the commission to require each electrical corporation and each gas corporation to identify those residences that used significantly more energy during the period than was used by similar residences with comparable household square footage in the subscriber’s geographical area and to ensure that information is provided to those subscribers on energy saving strategies and programs available to assist in financing energy efficiency improvements.</i></p>	

Bill Author	Subject	Status	Staff Recommendation	L&GO Position	Legislation Summary	Page 14
SB 575 Steinberg	Local Planning: Housing Element	ASM Local Government Hearing 7/8	Watch	Support	<p>The bill would require each electrical corporation and each gas corporation, on or before July 1, 2011, and each July 1 thereafter, to submit to the commission a report on the energy savings resulting from the pilot program adopted by the utility.</p> <p>This bill is a clean-up bill for SB 375 an SB 732, cleaning-up three provisions: the exemption for transportation sales tax projects; the rezoning requirement under housing element law and housing element due dates generally.</p>	
SB 676 Wolk	Local Fees	ASM Local Government Committee Hearing 7/1	Support CSAC Support	Support	<p>This bill increases or eliminates the statutory limits on 14 fees still set by state law: such as federal lien certificates, environmental quality act filings, recorded documents, document indexing, court-appointed counsel, restitution, county probation department payments, change of plea/setting aside of a verdict, sealing of records, installment payments, fingerprinting, support of a minor sealing of juvenile records. Amended 6/25: Adds "would authorize the county clerk to charge a fee of \$75 per filing in addition to the charges filed by the department."</p>	
SB 808 Wolk	San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Strategic Work Plan	SEN Natural Resources and Water Com  Set, first hearing. Hearing canceled at the request of author.  No movement	Watch	Watch	<p>This bill would require the State Water Resources Control Board to implement its resolution entitled the Strategic Workplan for Actions to Protect Beneficial Uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary by commencing an investigation of the reasonableness of the methods of diversions from the Sacramento-San Joaquin Delta used by the State Water Project and the federal Central Valley Project, ensuring that the implementation is consistent with its duties to protect the public trust and prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and taking other action. The state board would be required to prepare related quarterly reports, which the state board would be required to make available to the public and to post on the state board's Internet Web site.</p>	



Legal Community Against Violence

expertise. information & advocacy to end gun violence

## *Summary of Model Laws/Resolutions Prepared for ABAG February 2009*

Legal Community Against Violence (LCAV) has prepared the following model laws for the Association of Bay Area Governments (ABAG):

Model Ordinance Regulating Firearms Dealers and Ammunition Sellers: Federal and state regulation of firearms dealers and ammunition sellers is currently inadequate to protect the public safety. This model ordinance requires anyone engaged in the business of selling firearms or ammunition to fulfill certain local requirements. Among other things, the ordinance requires firearms dealers and ammunition sellers to obtain a permit from the local Sheriff or Chief of Police, be located only in commercial areas of the city or county, perform background checks on employees, use specified security measures, and maintain ammunition sales logs. These requirements will help law enforcement enforce federal and state firearms and ammunition laws and help ensure that these businesses are operating responsibly.

Model Ordinance Requiring the Reporting of Lost or Stolen Firearms: This model ordinance requires a person to report the loss or theft of a firearm he or she owns within 48 hours of the time he or she knew or reasonably should have known of such loss or theft. Laws requiring information about lost or stolen firearms help law enforcement expose and prosecute criminals and gun traffickers, who often falsely claim that their guns have been lost or stolen and used by others to commit crimes. Laws of this type also help law enforcement return lost or stolen firearms to their lawful owners and disarm persons prohibited by law from firearm possession. In addition, these requirements help make gun owners more accountable for their weapons, and help protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene.

Model Ordinance Prohibiting the Possession of Large Capacity Ammunition Magazines: Large capacity ammunition magazines or "LCAMs" are devices that attach to a firearm and hold more than ten rounds of ammunition, allowing a shooter to fire multiple bullets without reloading. LCAMs significantly increase the lethality of firearms. California law already prohibits the sale or transfer, but not the possession, of LCAMs. This model ordinance fills this gap in state law, thereby allowing local law enforcement to seize these dangerous devices when discovered, and prosecute individuals who possess them.

Model Resolution Urging Law Enforcement to Send Letters to Prospective Handgun Purchasers: California law imposes a ten-day waiting period prior to purchase of a handgun. It also allows the California Department of Justice (DOJ) to provide local law enforcement with a list of individuals who live in the city or county and who have applied to purchase a handgun. In Los Angeles, local law enforcement uses this list to send letters to prospective handgun purchasers in targeted areas of the City. These letters inform the prospective purchasers of their responsibilities as firearm owners, including their obligation to process secondary transfers through a licensed dealer, who completes a background check. As a result of the Los Angeles

program, a significant number of applicants for handgun purchases have decided not to purchase their handguns, possibly because they intended to transfer their handguns illegally to persons prohibited by law from firearm possession. This model resolution urges local law enforcement to set up a program similar to the one in Los Angeles.

Model Resolution Urging Law Enforcement to Obtain and Utilize DOJ Information Regarding Prohibited Armed Persons: Upon request, the California Department of Justice (DOJ) provides local law enforcement with a monthly list of persons in the city or county who legally purchased firearms in the jurisdiction, but then became prohibited from possessing them because of a criminal conviction or other disqualifying offense. DOJ also provides training to local law enforcement regarding use of this information. This model resolution urges law enforcement to request the information and training from DOJ, and to retrieve illegally possessed firearms whenever possible.



## **BACKGROUND**

In 2006, 3,345 people died from firearm-related injuries in California and an additional 4,491 people were hospitalized for non-fatal gunshot wounds.<sup>i</sup> California law forbids convicted felons and certain misdemeanants from possessing firearms, recognizing that these individuals represent the greatest risk for future firearm violence. Gaps in the law, however, have allowed many of these criminals to retain firearms they owned before being convicted. As a result, the Department of Justice estimates that as many as 60,000 convicted criminals currently possess firearms in California despite being prohibited by law.<sup>ii</sup> AB 814 seeks to reduce this significant threat to public safety.

## **EXISTING LAW**

Penal Code § 12021 prohibits persons from possessing firearms when they have been convicted of a felony or one of a number of misdemeanor offenses. Using a notice and form created by the Department of Justice, defendants are advised to transfer their firearms to a third party designee who must, within thirty days, relinquish the firearms to a local law enforcement agency, sell or transfer them to a third party through a licensed firearms dealer, or sell them to a dealer. Existing law provides no mechanism, however, to ensure that these firearms are actually relinquished.

Penal Code § 12021.3 also allows prohibited persons who relinquish their firearms to a law enforcement agency to sell those firearms. Currently, any firearms relinquished to or seized by law enforcement must be retained and stored by law enforcement for at least 180 days, during which the prohibited person may sell the weapons. This law places an undue burden upon law enforcement to store the firearms of convicted criminals for a lengthy period of time.

## **THIS BILL**

### **ESTABLISHES A CLEAR PROCESS FOR TIMELY FIREARM RELINQUISHMENT**

AB 814 will facilitate enforcement of existing state laws prohibiting illegal firearm possession by establishing a clear process and timeline for firearm relinquishment by prohibited persons. Under the bill, upon conviction of a crime disqualifying a defendant from firearm possession, a defendant must be instructed by the judge that he or she is prohibited from owning or possessing any firearms. The judge must also provide the defendant with a notice and form describing the manner in which firearms may be relinquished and the penalties attached to failure to comply.

Upon conviction, a prohibited person must transfer his or her firearms to a designee who must sell the firearms to a dealer, sell or transfer them to a third party through a dealer, or relinquish them to local law enforcement. If the prohibited person is not in law enforcement custody following conviction, the relinquishment process must be completed within 5 days. If the prohibited person remains in custody, the process must be completed within 14 days.

### **REQUIRES PROHIBITED PERSONS TO DECLARE FIREARM OWNERSHIP**

Under the bill, all prohibited persons must, within the relinquishment period, submit a form to local law enforcement stating: 1) whether or not they owned any firearms to relinquish; and 2) if so, to whom any firearms were relinquished.

### **ENCOURAGES LAW ENFORCEMENT TO RETRIEVE PROHIBITED WEAPONS**

The bill encourages local law enforcement to review each defendant's sworn submissions against the Department of Justice's handgun transfer databases to help identify prohibited persons who have lied about firearm ownership or relinquishment in their sworn submissions.

The bill also encourages law enforcement to retrieve prohibited weapons whenever possible.

## REDUCES BURDEN ON LAW ENFORCEMENT

This bill reduces the length of time during which law enforcement must retain a prohibited person's firearms following relinquishment, from 180 days to 30 days. If a prohibited person has not, through his or her designee, sold a firearm by the end of the 30 days, it becomes the property of the law enforcement agency.

## BILL STATUS

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2/26/09: Introduced  
4/14/09: ASM Public Safety Committee (7-0)  
5/28/09: ASM Appropriations (12-0)  
6/3/09: ASM Floor (72-3)  
Proceeding to Senate

## SUPPORT

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### Sponsor: Legal Community Against Violence

- California Partnership to End Domestic Violence
- City of Los Angeles
- City of Oakland
- Ken James, Chief of Police for the City of Emeryville
- Randy G. Adams, Chief of Police for the City of Glendale
- Chris Magnus, Chief of Police for the City of Richmond
- Craig T. Steckler, Chief of Police for the City of Fremont
- Paul M. Walters, Chief of Police for the City of Santa Ana
- Blair Uring, Chief of Police for the City of Stockton
- Kamala D. Harris, District Attorney City and County of San Francisco
- Tom Orloff, District Attorney for Alameda County
- Coalition Against Gun Violence (Santa Barbara)
- Coalition To Stop Gun Violence
- Crime Victims United
- Friends Committee on Legislation
- Brady Campaign to Prevent Gun Violence, California Chapters

- Oakland/Alameda County, Orange County, Nevada County and Sacramento Chapters of Brady Campaign to Prevent Gun Violence
- Peace Over Violence (LACAAW)
- Physicians for Social Responsibility
- Rainbow Services, Ltd.
- Women Against Gun Violence
- Youth ALIVE!

## FOR MORE INFORMATION

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Office of Assistant Majority Leader Krekorian  
Josefina Ramirez - (916) 319-2043

Legal Community Against Violence  
Juliet Leftwich & Ben Van Houten  
(415) 433-2062

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<sup>i</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), Firearm Injuries in California (2009), at [http://www.applications.dhs.ca.gov/epicdata/content/st\\_firearm.htm](http://www.applications.dhs.ca.gov/epicdata/content/st_firearm.htm).

<sup>ii</sup> California Department of Justice, Office of the Attorney General, *Brown Cracks Down on Illegal Gun Possession*, News Release, Dec. 10, 2007, at: <http://ag.ca.gov/newsalerts/release.php?id=1505>.

KEVIN DE LEÓN  
CHAIR, ASSEMBLY APPROPRIATIONS  
FORTY-FIFTH DISTRICT

WEB  
<http://democrats.assembly.ca.gov/members/a45/>

## AB 962 (DE LEÓN): PROTECTION Act of 2009

### *Providing Regulation & Oversight To End Community Terrorism In Our Neighborhoods*

#### PURPOSE

To safeguard California's communities by combating the easy accessibility to handgun ammunition that fuels gun violence and criminal activity.

#### BACKGROUND

According to the Department of Justice (DOJ), California's gun violence has increased nearly 35% in just six years, with more than 60% of all murders committed with handguns. In Los Angeles alone, between 2005 and 2006, the LA Sheriff's office handled more than 400 homicides—over 80% involving firearms and nearly 60% committed by gang members.

In a state where firearms outnumber people, there is currently no regulatory control over deadly ammunition that fuels gun violence. **It is easier in California to purchase handgun ammunition than it is a package of cigarettes or allergy medicine.**

**It is no secret. Bullets are ending up in the wrong hands across California.** A 2006 RAND Corporation study found that, in just a two month period in Los Angeles, felons and others prohibited by law from possessing ammunition purchased over 10,000 rounds of ammunition at gun shops and sporting goods stores across the city.<sup>1</sup> Extrapolate that number, and statewide at least more than a half a million bullets are annually sold to criminals—enough to fully load more than 94,000 handguns in criminal possession each year.

California has enacted legislation designed to keep guns out of the hands of criminals, but it has done little to prevent criminals and gang members from loading up on the ammunition that fuels gun violence. We have absolutely no idea who is selling bullets; not a single statewide law enforcement agency tracks ammunition dealers in California. This blind eye approach is putting ammunition in the hands of killers and it needs to stop.

This bill would require handgun ammunition dealers to obtain a DOJ-issued Handgun Ammunition Vendor's License (HAVL) in order to sell handgun ammunition. This will help crack down on illegal uses of ammunition and assist law enforcement in tracking down criminal purchasers.

Also, this measure would require handgun ammunition vendors to record handgun ammunition sales, and make the records

available to law enforcement for the purposes of crosschecking purchasers with prohibited person's databases, to help crack down on criminals purchasing ammunition.

Thirteen cities across California currently enforce successful local ammunition record-keeping laws used to record ammunition sales and purchases. Notably, the City of Sacramento Police Department reports that the ordinance is an effective enforcement and investigative tool. **In reviewing their ammunition-purchaser records for 2008, the Sacramento Police Department recently found that over 150 prohibited persons purchased ammunition within the year in their city alone.** A statewide requirement is needed to prevent purchasers from loading up on unmonitored ammunition sales outside these city boundaries.

To help law enforcement stop straw purchases, the measure will also make it unlawful to sell or furnish ammunition to any person known to be prohibited from possessing or acquiring ammunition. While it is illegal to knowingly sell a gun to a felon, it is currently perfectly legal to sell or supply known felons with handgun ammunition. Additionally, to keep bullets out of the hands of gang members, this bill will prohibit any person subject to a gang injunction from possessing ammunition.

**This measure would cut off the dangerously easy access to handgun ammunition and will ensure that handgun ammunition will not be sold to criminals, gang members, and kids.**

#### PROPOSAL

- **Require handgun ammunition vendors to:**
  - Acquire a Handgun Ammunition Vendor's License from DOJ;
  - Require employees handling ammunition sales/transfers to obtain a DOJ-issued Certificate of Eligibility, which includes a fingerprint and background check clearance.
  - Record handgun ammunition sales and make the records available to law enforcement.
  - Safely store handgun ammunition.
  - Conduct only face-to-face transactions on all ammunition purchases/transfers.
- **Prohibit selling or furnishing ammunition to prohibited persons.**
- **Prohibit gang members from possessing ammunition.**

<sup>1</sup> RAND Corporation. "RAND study finds substantial amounts of ammunition bought by felons, others prohibited from buying bullets."  
<http://www.rand.org/news/press/06/10/05.html>. 5 October 2006.

KEVIN DE LEÓN  
CHAIR, ASSEMBLY APPROPRIATIONS  
FORTY-FIFTH DISTRICT

WEB  
<http://democrats.assembly.ca.gov/members/a45/>

**AB 962 (DE LEÓN)**  
**SUPPORT AND OPPOSITION LIST**

**SUPPORT**

Brady Campaign to Prevent Gun Violence,  
Alameda County/Oakland Chapter  
Brady Campaign to Prevent Gun Violence, Contra  
Costa County Chapter  
Brady Campaign to Prevent Gun Violence, Los  
Angeles Chapter  
Brady Campaign to Prevent Gun Violence, Long  
Beach Chapter  
Brady Campaign to Prevent Gun Violence, Nevada  
County Chapter  
Brady Campaign to Prevent Gun Violence, Orange  
County Chapter  
Brady Campaign to Prevent Gun Violence,  
Riverside County Chapter  
Brady Campaign to Prevent Gun Violence,  
Sacramento Valley Chapter  
Brady Campaign to Prevent Gun Violence, San  
Diego Chapter  
Brady Campaign to Prevent Gun Violence, San  
Fernando Valley Chapter  
Brady Campaign to Prevent Gun Violence, San  
Mateo/Santa Clara Counties Chapter  
Brady Campaign to Prevent Gun Violence, Sonoma  
County Chapter  
Brady Campaign to Prevent Gun Violence, Ventura  
County Chapter  
Brady Campaign to Prevent Gun Violence, West  
Contra Costa County Chapter  
California Chapters of the Brady Campaign to  
Prevent Gun Violence  
Chief of Police Edward Medrano, City of Gardena  
Chief of Police Anthony Batts, City of Long Beach  
Chief of Police William Bratton, City of Los  
Angeles  
Chief of Police Cam Sanchez, City of Santa Barbara

Chief of Police Blair Urling, City of Stockton  
Chief of Police John Crombach, City of Oxnard  
Chief of Police Peter Dunbar, City of Pleasant Hill  
Chief of Police Phillip Green, Cities of Corte  
Madera/Larkspur  
Chief of Police Susan Jones, City of Healdsburg  
City of Los Angeles, Mayor Antonio Villaraigosa  
City of Oakland, Mayor Ronald V. Dellums  
City of Sacramento  
Coalition Against Gun Violence  
Councilmember Kevin McCarty, City of  
Sacramento  
Friends Committee on Legislation of California  
Legal Community Against Violence  
Lutheran Office of Public Policy  
Sheriff Leroy D. Baca, County of Los Angeles  
Women Against Gun Violence  
Violence Prevention Coalition of Greater Los  
Angeles  
Violence Prevention Coalition of Orange County  
Youth ALIVE!  
Private Citizens

**OPPOSITION**

California Association of Firearm Retailers  
California Public Defenders Association  
California Rifle and Pistol Association  
Crossroads of the West Gun Shows  
Gun Owners of California  
National Rifle Association of America  
National Shooting Sports Foundation, Inc.  
Outdoor Sportsmen's Coalition of California  
Safari Club International  
The California Sportsman's Lobby, Inc.  
Private Citizens



Legal Community Against Violence

expertise, information & advocacy to end gun violence

## *Summary of Model Laws/Resolutions Prepared for ABAG February 2009*

Legal Community Against Violence (LCAV) has prepared the following model laws for the Association of Bay Area Governments (ABAG):

Model Ordinance Regulating Firearms Dealers and Ammunition Sellers: Federal and state regulation of firearms dealers and ammunition sellers is currently inadequate to protect the public safety. This model ordinance requires anyone engaged in the business of selling firearms or ammunition to fulfill certain local requirements. Among other things, the ordinance requires firearms dealers and ammunition sellers to obtain a permit from the local Sheriff or Chief of Police, be located only in commercial areas of the city or county, perform background checks on employees, use specified security measures, and maintain ammunition sales logs. These requirements will help law enforcement enforce federal and state firearms and ammunition laws and help ensure that these businesses are operating responsibly.

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program, a significant number of applicants for handgun purchases have decided not to purchase their handguns, possibly because they intended to transfer their handguns illegally to persons prohibited by law from firearm possession. This model resolution urges local law enforcement to set up a program similar to the one in Los Angeles.

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Legal Community Against Violence

expertise, information & advocacy to end gun violence

***California Jurisdictions with Laws Similar to the Model Laws LCAV Prepared for ABAG  
February 2009***

The following jurisdictions have adopted laws similar to the model ordinances and resolutions Legal Community Against Violence (LCAV) has prepared for the Association of Bay Area Governments (ABAG)<sup>1</sup>:

**Laws Requiring Firearms Dealers to Obtain a License or Permit:**

The following local governments in California require firearms dealers to obtain a license or permit:

Counties: Contra Costa, Los Angeles and Marin

Cities:

Alameda	Hayward	Richmond	Santa Ana
Albany	Hercules	Sacramento	Santa Cruz
Berkeley	Lafayette	Salinas	Santa Monica
Beverly Hills	Los Angeles	San Anselmo	Tiburon
Cathedral City	Oakland	San Diego	West Hollywood
Chino	Palo Alto	San Francisco	
El Cerrito	Piedmont	San Pablo	
Fremont	Pleasanton	San Rafael	

**Laws Requiring Firearms Dealers to Carry Liability Insurance**

The following local governments in California require firearms dealers to carry liability insurance, typically with a minimum coverage of at least \$1 million:

Counties: Los Angeles and Marin

Cities:

Albany	Pasadena
Berkeley	Piedmont
Beverly Hills	Pleasanton
Cathedral City	Richmond
Fremont	Salinas
Hayward	San Anselmo
Lafayette	San Francisco
Los Angeles	San Pablo
Oakland	San Rafael
Palo Alto	Santa Monica
	Tiburon

<sup>1</sup> This information is primarily taken from LCAV's publication, "Communities on the Move 2000: How California Communities Are Addressing the Epidemic of Handgun Violence," available at: [http://www.lcav.org/library/surveys\\_local\\_ordrs/com2000\\_pdf.pdf](http://www.lcav.org/library/surveys_local_ordrs/com2000_pdf.pdf).

**Laws Prohibiting Firearms Dealers in Residential Areas**

The following local governments in California prohibit firearms dealers in residential areas or from qualifying as a “home occupation” (i.e., a home business):

Counties: Contra Costa, Los Angeles, Monterey<sup>2</sup> and Sonoma

Cities:

Albany	La Puente	Pleasanton
Artesia	Lafayette	Richmond
Berkeley	Long Beach	Salinas
Beverly Hills	Los Angeles	San Francisco
Burbank	Oakland	San Jose
Calistoga	Oxnard	San Pablo
Cathedral City	Pacifica	San Rafael
Daly City	Palo Alto	Santa Ana
El Cerrito	Pasadena	Santa Monica
Fontana	Piedmont	Stockton
Fremont	Pinole	Vacaville <sup>3</sup>
Hercules		

**Laws Prohibiting Firearms Dealers Near Sensitive Areas**

The following local governments in California prohibit firearms dealers near sensitive areas, such as daycare facilities, schools, parks, places of worship and community/recreation centers:

Counties: Contra Costa and Monterey<sup>4</sup>

Cities:

Albany	Pinole
Cathedral City	Richmond
El Cerrito	Salinas
Hercules	San Francisco
Los Angeles	San Pablo
Oakland	San Rafael
Palo Alto	West Hollywood

<sup>2</sup> Applies to the sale of handguns only.

<sup>3</sup> An additional 33 jurisdictions indirectly prohibit the residential sale of firearms by, for example, allowing only the sale of products from a residence if those products are manufactured at the residence, or prohibiting retail sales entirely as a “home occupation.” For a list of these jurisdictions, see LCAV’s publication, “Communities on the Move 2000,” *supra* note 1 at 7.

<sup>4</sup> Applies to the sale of handguns only.

**Laws Requiring Background Checks of Firearms Dealer Employees**

The following local governments in California require background checks of employees of firearms dealers:

Counties: Los Angeles and Marin

Cities:

Alameda	Hayward	Pleasanton	San Pablo
Berkeley	Hercules	Palo Alto	San Rafael
Beverly Hills	La Puente	Richmond	Santa Ana
Cathedral City	Lafayette	Sacramento	Santa Monica
Chino	Los Angeles	San Anselmo	Tiburon
El Cerrito	Merced	San Diego	West Hollywood
El Segundo <sup>5</sup>	Oakland	San Francisco	
Fremont	Piedmont	San Leandro	

**Laws Requiring Ammunition Sellers to Obtain a License or Permit**

The following local governments in California are among those that require ammunition sellers to obtain a license or permit:<sup>6</sup>

Berkeley  
Los Angeles  
Richmond  
Sacramento  
San Francisco

**Laws Requiring Ammunition Sellers to Maintain a Log of Ammunition Sales:**

The following local governments in California require ammunition sellers to keep records of their ammunition sales.

Counties: Contra Costa and Marin

Cities:

Beverly Hills	San Anselmo
Hayward	San Francisco
Inglewood	Santa Ana
Los Angeles	Santa Monica
Oakland	Tiburon
Pomona	West Hollywood
Sacramento	

<sup>5</sup> Applies to the sale of handguns only.

<sup>6</sup> LCAV has not completed an exhaustive search for ordinances of this kind.

**Laws Requiring the Reporting of Lost or Stolen Firearms:**

The following local governments in California require the reporting of lost or stolen firearms:

Berkeley  
Los Angeles  
Oakland  
Port Hueneme  
San Francisco  
Sacramento  
Simi Valley  
Thousand Oaks  
West Hollywood

**Laws Prohibiting the Possession of Large Capacity Ammunition Magazines:**

The City of Richmond currently prohibits the possession of large capacity ammunition magazines.

**Resolution Urging Law Enforcement to Send Letters to Prospective Handgun Purchasers:**

As described in the resolution itself, this resolution is based on a unique program in Los Angeles.

**Resolution Urging Law Enforcement to Obtain and Utilize DOJ Information Regarding Prohibited Armed Persons:**

Attached is a list of cities and counties in California that had **not** signed up with the California Department of Justice (DOJ) to receive monthly lists of prohibited armed persons in their jurisdictions as of December 19, 2008. Please note that law enforcement agencies in the jurisdictions that receive these lists have not necessarily received training from DOJ regarding use of the information on the lists or taken steps to retrieve firearms illegally possessed by persons on the lists. Additional information about whether a particular jurisdiction's law enforcement agency receives these lists, has received training from the DOJ or has taken other steps to retrieve illegally possessed firearms can be obtained from DOJ or the agency.

California jurisdictions that have not obtained APPS Mailbox as of 12/19/08.

Have Not Obtained APPS Mailbox as of 12/19/08

	<b>Chapter/County</b>	<b>Done</b>
<b>SHERIFF DEPARTMENTS</b>		
Del Norte County		
Glenn County		
Imperial County		
Kern County		
Kings County		
Mendocino County		
Plumas County		
San Bernardino County		
Siskiyou County		
 <b>POLICE DEPARTMENTS</b>		
Alturus Police Department	(Modoc Co)	
Antioch Police Department	(Contra Costa Co)	
Atascadero Police Department	(San Louis Obispo Co)	
Bear Valley Police Department	(Kern Co)	
Belvedere Police Department	(Marin Co.)	
Blue Lake Police Department	(Humbolt Co.)	
Brawley Police Department	(Imperial Co)	
Calexico Police Department	(Imperial Co)	
Calipatria Police Department	(Imperial Co)	
Colusa Police Department	<b>Sacramento Valley</b>	sent 1/26
Corona Police Department	(Riverside Co)	
Dana Point Police Department	(Orange Co)	
Danville Police Department	(Contra Costa Co)	
Del Rey Oaks Police Department	(Monterey Co)	
Downey Police Department	(Los Angeles Co)	
East Palo Alto Police Department	(San Mateo Co)	
Escondido Police Department	(San Diego Co)	
Gardena Police Department	(Los Angeles Co)	
Gridley Police Department	<b>Sacramento Valley</b>	sent 1/26
Hollister Police Department	(San Benito Co)	
Holtville Police Department	(Imperial Co)	
Imperial Police Department	(Imperial Co)	
Kingsburg Police Department	(Fresno Co)	
Lakeport Police Department	(Lake Co)	
Livingston Police Department	(Merced Co)	
Los Alamitos Police Department	(Orange Co)	
Maricopa Police Department	(Kern Co)	
Marysville Police Department	<b>Sacramento Valley</b>	sent 1/26
Maywood Police Department	(Los Angeles Co)	
Menlo Park Police Department	(San Mateo Co)	
Merced Police Department	(Merced Co)	
Millbrae Police Department	(San Mateo Co)	
Nevada City Police Department	<b>Nevada County</b>	sent1/25
Novato Police Department	(Marin Co)	
Orange Police Department	(Orange Co)	
Palo Alto Police Department	(Santa Clara Co)	

Pasadena Police Department	(Los Angeles Co)	
Redding Police Department	(Shasta Co)	
Redwood City Police Department	(San Mateo Co)	
Rialto Police Department	(San Bernardino Co)	
Rio Dell Police Department	(Humbolt Co)	
San Anselmo Police Department	(Marin Co)	
San Carlos Police Department	(San Mateo Co)	
San Jacinto Police Department	(Riverside Co)	
Sand City Police Department	(Monterey Co)	
Santa Maria Police Department	(Santa Barbara Co)	
Santa Monica Police Department	(Los Angeles Co)	
Sausalito Police Department	(Marin Co)	
Seal Beach Police Department	(Orange Co)	
Seaside Police Department	(Monterey Co)	
Stallion Springs Police Department	(Kern Co)	
Suisun City Police Department	(Solano Co)	
Sutter Creek Police Department	(Amador Co)	
Taft Police Department	(Kern Co)	
Temecula Police Department	(Riverside Co)	
Tracy Police Department	(San Joaquin Co)	
Trinidad Police Department	(Humbolt Co)	
Truckee Police Department	<b>Nevada County</b>	sent 1/25
Vallejo Police Department	(Solano Co)	
Weed Police Department	(Siskiyou Co)	
Westmorland Police Department	(Imperial Co)	
Whittier Police Department	(Los Angeles Co)	
Windsor Police Department	(Sonoma Co)	

Chief Name	Street Address	City		Zip
Sheriff Dean Wilson	650 5th Street	Crescent City	CA	95531
Sheriff Larry Jones	543 West Oak	Willows	CA	95988
Sheriff Ray Loera	328 West Applestill	El Centro	CA	92244
Sheriff Donny Youngblood	1350 Norris Road	Bakersfield	CA	93308
Sheriff Chris Jordan	1444 West Lacey Blvd.	Hanford	CA	93230
Sheriff Tom Allman	951 Low Gap Road	Ukiah	CA	95482
Sheriff Terry Bergstrand	1400 East Main Street	Quincy	CA	95971
Sheriff Gary Penrod	655 East Third Street	San Bernardino	CA	92415
Sheriff Rick Riggins	311 Lane Street	Yreka	CA	96097
Chief Ken Barnes	200 North Street	Alturas	CA	96101
Chief James Hyde	300 L Street	Antioch	CA	94509
Chief Jim Mulhall	5505 El Camino Real	Atascadero	CA	93422
Chief Terry D. Freeman	25101 Bear Valley Road	Tehachapi	CA	93561
Chief Mark Campbell	450 San Raphael Avenue	Belvedere	CA	94920
<b>(Chief David Gundersen)</b>	111 Greenwood Road	Blue Lake	CA	95525
Chief Mark Gilmore	351 Main Street	Brawley	CA	92227
Chief Lee Neujahr	420 East Fifth Street	Calexico	CA	92231
Chief Reggie Gomez	140 West Main Street	Calipatria	CA	92233
Chief Lyle Montgomery	260 6th Street	Colusa	CA	95932
Chief Richard Madory	849 West Sixth Street	Corona	CA	92882
Chief Mark Levy	33282 Golden Lantern Street	Dana point	CA	92629
Chief Chris Wenzel	510 La Gonda way	Danville	CA	94526
<i>(not listed on website)</i>	650 Canyon Del Rey	Del Rey Oaks	CA	93940
Chief Roy Campos	10911 B rookshire Ave.	Downey	CA	90241
Chief Ronald L. Davis	141 Demeter Street	East Palo Alto	CA	94303
Chief Duane White	700 West Grand Ave.	Escondido	CA	92025
Chief Ed Medrano	1718 West 162nd Street	Gardena	CA	90247
Chief Gary Keeler	685 Kentucky Street	Gridley	CA	95948
Chief Jeff Miller	395 Apollo Court	Hollister	CA	95023
Interim Chief Rick Watson	585 Fern Ave.	Holtville	CA	92250
Chief Miguel Colón	424 Imperial Avenue	Imperial	CA	92251
Chief Jeff Dunn	1300 California Street	Kingsburg	CA	93631
Chief Kevin Burke	916 North Forbes Street	Lakeport	CA	95453
Chief Bill Eldridge	1446 C Street	Livingston	CA	95334
Chief Todd Mattern	3201 Katella Avenue	Los Alamitos	CA	90720
<i>(Under Kern Co Sheriff)</i>	400 California Street	Maricopa	CA	93252
Chief Wallace C. Fullerton	316 6th Street	Marysville	CA	95901
Chief Frank Hauptman	4319 East Slauson Avenue	Maywood	CA	90270
Chief Bruce Goitia	701 Laurel Street	Menlo Park	CA	94025
Chief Russ Thomas	611 West 22nd Street	Merced	CA	95340
Chief Thomas Hitchcock	581 Magnolia Avenue	Millbrae	CA	94030
Chief Louis Trovato	317 Broad Street	Nevada City	CA	95959
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Chief Lynne Johnson	275 Forest Avenue	Palo Alto	CA	94301

Chief Bernard Melekian	207 North Garfield Avenue	Pasadena	CA	91101
Chief Peter T. Hansen	1313 California Street	Redding	CA	96001
Chief Louis A. Cobarruviaz	1301 Maple Street	Redwood City	CA	94064
Chief Mark P. Kling	128 North Willow Avenue	Rialto	CA	92376
Chief Graham Hill	675 Wildwood Avenue	Rio Dell	CA	95562
Chief Charles Maynard	525 San Anselmo Avenue	San Anselmo	CA	94960
Chief Gregory P. Rothaus	600 Elm Street	San Carlos	CA	94070
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Chief Timothy J. Jackman	333 Olympic Blvd,	Santa Monica	CA	90401
Chief Scott Paulin	300 Locust Street	Sausalito	CA	94965
Chief Jeffrey Kirkpatrick	911 Seal Beach Blvd.	Seal Beach	CA	90740
Chief Stephan M. Cercone	440 Harcourt Avenue	Seaside	CA	93955
<i>(not listed on website)</i>	28500 Stallion Springs Drive	Tehachapi	CA	93561
Chief Ed Dadisho	701 Civic center Blvd	Suisun City	CA	94585
Chief J. Robert Duke	18 Main Street	Sutter Creek	CA	95685
Chief Bert Pumphrey	320 Commerce Way	Taft	CA	93268
Chief Jerry Williams	30755-A Auld Road	Murrieta	CA	92563
Interim Chief Rick Golphin	1000 Civic Center Drive	Tracy	CA	95376
Chief Ken Thrailkill	409 Trinity Street	Trinidad	CA	95570
Chief Scott Berry	10183 Truckee Airport Road	Truckee	CA	96161
Chief Robert W. Nichelini	111 Amador Street	Vallejo	CA	94590
Chief Martin G. Nicholas	550 Main Street	Weed	CA	96094
Chief Fred Beltran	355 South Center Street	Westmorland	CA	92281
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Mayor: Esteban Vasquez, 383 Main St., Brawley

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Mayor: Joseph Russell, Vice Mayor: Jerry Edelen

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Mayor: Bianca Padilla, 121 West Fifth St, Holtville

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(650) 330-6326  
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(661) 763-3101  
(951) 696-3000  
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Legal Community Against Violence

expertise, information & advocacy to end gun violence

*LCAV Model Law*  
**REGULATING FIREARMS DEALERS AND AMMUNITION SELLERS  
(LOCAL GOVERNMENTS IN CALIFORNIA)**

May 2009

**About LCAV and Our Model Laws**

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

*This report and model law do not offer, and are not intended to constitute, legal advice.*

**Executive Summary**

LCAV has developed a model law for California jurisdictions to regulate firearms dealers and ammunition sellers. As detailed in the findings below, federal and state regulation of these entities is currently inadequate to protect the public safety.

Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), ATF does not have the resources or authority to properly oversee the more than 100,000 firearms dealers, manufacturers, collectors, and others that it licenses ("FFLs").<sup>1</sup> In fact, on average, ATF inspects each FFL only once every 17 years, and the Office of the Inspector General has concluded that inspections by ATF are not fully effective for ensuring that FFLs comply with federal firearms laws. In addition, federal law is silent regarding many important aspects of the dealer's business, such as its location (leaving dealers free to operate out of their homes and near schools and other places children frequent) and on-site security requirements.

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<sup>1</sup> References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model law below.

ATF has found that FFLs are the largest source of trafficked firearms. In addition, during fiscal year 2007, ATF found that over 30,000 firearms were missing from FFLs' inventories with no record of sale. In 1998, ATF found that 56% of randomly inspected dealers and 30% of pawnbrokers selling 50 or more guns had violated federal firearms law.

As of November 24, 2008, there were 2,043 federally licensed firearms dealers and pawnbrokers in California. California is among a minority of states that impose additional licensing requirements on firearms dealers, but even there the standards are minimal. As confirmed by a California Court of Appeals in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997), California law authorizes local regulation in this area. Dozens of local governments in California have exercised this authority and now require firearms dealers to obtain a license or permit and impose additional requirements on dealers.

While firearms dealers are regulated somewhat at both the federal and state level, neither federal nor California law currently regulates sellers of ammunition. Jurisdictions with regulations that govern firearms dealers may therefore wish to expand their laws to cover ammunition sellers as well. In fact, a number of California jurisdictions, including Berkeley, Los Angeles, Richmond, Sacramento, and San Francisco, now require sellers of ammunition to obtain a license. Moreover, more than a dozen local jurisdictions in California require ammunition sellers to maintain records of ammunition sales. As detailed in the findings below, these jurisdictions have had great success utilizing these records to identify people who illegally possess firearms, as well as ammunition.

This model law is intended to fill the gaps in the federal and state regulatory oversight of firearms dealers and ammunition sellers. More specifically, the goals of this model law are to help: 1) ensure that dealers' operations will not be detrimental to the public health and safety; 2) prevent and detect illegal trafficking of firearms and ammunition by dealers and their employees; 3) prevent the loss and theft of firearms and ammunition from dealers; and 4) prevent and detect the sale of firearms and ammunition by dealers to persons who are prohibited by law from possessing these items.

The principal elements of this model law include:

- Findings. Findings describe the legal background and policy basis for the law.
- Law Enforcement Permit. Anyone selling firearms, firearm components or ammunition is required to obtain a local law enforcement permit.
- Employee Background Checks. Every employee with access to or control over firearms, firearm components or ammunition is required to undergo a background check.
- On-site Security. Security standards for the business premises include the maintenance of an alarm system and surveillance cameras, and requirements for the safe storage of firearms, firearm components and ammunition when the store is both open and closed for business.
- Inventory Reports. Firearms dealers must submit a report to law enforcement detailing their inventory every six months.
- Liability Insurance. Firearms dealers must carry liability insurance with limits of at least \$1 million per incident.

- Prohibition on Operating in Sensitive Areas. Firearms dealers and ammunition sellers are prohibited from operating in residential neighborhoods or near other sensitive areas, such as schools, daycare centers, or parks.
- Land Use Permit. Firearms dealers and ammunition sellers must obtain a land use permit to ensure that the location of the business complies with the jurisdiction's general plan and the business operations will not be detrimental to the public health and safety of those nearby.
- Ammunition Sales Records. Ammunition sellers are required to make and maintain records of ammunition sales that are available to law enforcement.

This report is based on LCAV's review of existing laws, judicial decisions, policy research, studies, and other gun violence prevention data, and it should answer many questions about the options available to communities regarding firearms dealers and ammunition sellers.

This report contains our nonpartisan analysis, study, and research on gun violence prevention case law and policies, and is intended for broad distribution to the public. Our presentation of this report is based upon our independent and objective analysis of the relevant law and pertinent facts and should enable public readers to form their own opinions and conclusions about the merits of this sample legislation.

Part I of these materials provides the text of the model law. Part II provides examples of legal challenges typically brought against firearms laws and explains that in the majority of cases, courts reject these arguments. Part III describes and responds to anticipated opposition arguments.

LCAV is ready to provide additional legal research, analysis, and drafting assistance to those seeking to enact a law regulating firearms dealers and ammunition sellers, or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services.

**TABLE OF CONTENTS**

**About LCAV and Our Model Laws .....page 1**

**Executive Summary.....page 1**

**I. Text of Model Law.....page 5**

**II. Common Legal Challenges to Gun Violence Prevention Laws.....page 26**

A. The Second Amendment and State Right to Bear Arms.....page 26

    1. The Second Amendment.....page 26

    2. State Right to Bear Arms.....page 28

B. Equal Protection.....page 28

C. Due Process.....page 29

D. Privilege Against Self-Incrimination.....page 31

E. Preemption and Local Authority to Regulate Firearms.....page 31

    1. Federal Preemption.....page 31

    2. State Preemption.....page 32

**III. Responses to Common Opposition Arguments.....page 35**

**Conclusion .....page 37**

**I. Text of Model Law**

**CHAPTER 1 REGULATION OF FIREARMS DEALERS AND AMMUNITION SELLERS**

**ARTICLE 1 SALE OF FIREARMS AND AMMUNITION**

- Sec. 1 Definitions**
- Sec. 2 Law enforcement permit and employee background checks**
- Sec. 3 Application**
- Sec. 4 Investigation by Chief of Police/Sheriff\***
- Sec. 5 Grounds for permit denial or revocation**
- Sec. 6 On-site security**
- Sec. 7 Liability insurance**
- Sec. 8 Location of business premises**
- Sec. 9 Ammunition sales records**
- Sec. 10 Restricted admittance of minors and other prohibited purchasers**
- Sec. 11 Inventory reports**
- Sec. 12 Display of law enforcement permit**
- Sec. 13 Issuance of law enforcement permit – Duration**
- Sec. 14 Nonassignability**
- Sec. 15 Compliance by existing businesses**
- Sec. 16 Law enforcement inspections**
- Sec. 17 Warning regarding secondary sales**
- Sec. 18 Penalties**
- Sec. 19 Report of permit revocation to federal and state authorities**
- Sec. 20 Hearing for permit denial or revocation**
- Sec. 21 Severability clause**

**ARTICLE 2 LAND USE PERMITS**

- Sec. 1 Firearm and ammunition sales**
- Sec. 2 Nonconforming uses**
- Sec. 3 Severability clause**

**Findings**

[Findings regarding the need for and benefits of these regulations should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

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\* Where the words "Chief of Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

## Findings Regarding Gun Violence in General

*Whereas*, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;<sup>2</sup>

## Findings Regarding Current Federal Regulation of Firearms Dealers

*Whereas*, federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect the public safety,

*Whereas*, although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”),<sup>3</sup> ATF does not have the resources or authority to properly oversee the more than 100,000 firearms dealers, manufacturers, collectors and others that it licenses (“FFLs”),<sup>4</sup>

*Whereas*, ATF reported in 2007 that it inspects each FFL, on average, only once every 17 years,<sup>5</sup>

*Whereas*, between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year,<sup>6</sup>

*Whereas*, ATF faces numerous obstacles that limit its ability to enforce the law; for example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for ATF’s prosecution and revocation of licenses is extremely high, serious violations of firearms law have been classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed,<sup>7</sup>

*Whereas*, the Office of the Inspector General has concluded that inspections by ATF are not fully effective for ensuring that FFLs comply with federal firearms laws,<sup>8</sup>

*Whereas*, ATF has found that FFLs are a major source of trafficked firearms. In June of 2000, ATF issued a comprehensive report of firearms trafficking in this country. That report analyzed 1,530 trafficking investigations during the period July 1996 through December 1998, involving

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<sup>2</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

<sup>3</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>4</sup> The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives provided the total number of federal firearms licensees as of November 8, 2007.

<sup>5</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 18, December 2008, available at: [www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf).

<sup>6</sup> Brady Center to Prevent Gun Violence, *Shady Dealings, Illegal Gun Trafficking From Licensed Gun Dealers* 23 (Jan. 2007), available at: <http://www.bradycenter.org/xshare/pdf/reports/shady-dealings.pdf>. In 2006, ATF increased its total revocations to 131. *Id.*

<sup>7</sup> *Id.* at 24-26.

<sup>8</sup> Office of the Inspector General, Evaluation and Inspections Division, U.S. Department of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004), available at: <http://www.usdoj.gov/oig/reports/ATF/e0405/exec.htm>.

more than 84,000 diverted firearms.<sup>9</sup> ATF found that FFLs were associated with the largest number of trafficked guns – over 40,000 – and concluded that “FFLs’ access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law,”<sup>10</sup>

*Whereas*, during fiscal year 2007, ATF found over 30,000 firearms missing from licensees’ inventories with no record of sale,<sup>11</sup>

*Whereas*, in 1998, ATF found that 56% of randomly inspected dealers and 30% of pawnbrokers selling 50 or more guns had violated federal firearms law,<sup>12</sup>

*Whereas*, federal laws are silent regarding many important aspects of the dealer’s business, such as its location (leaving dealers free to operate out of their homes and near schools and other places children frequent) and security requirements during business hours,

*Whereas*, according to a 1998 ATF random sample of FFLs nationwide, 56% of all dealers operated out of their homes, and 33% were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores,<sup>13</sup>

#### Findings Regarding Current State and Local Regulation of Firearms Dealers

*Whereas*, as of November 24, 2008, there were 2,043 federally licensed firearms dealers and pawnbrokers in California,<sup>14</sup>

*Whereas*, California is among a minority of states that impose licensing requirements on firearms dealers, but the standards are minimal,<sup>15</sup>

*Whereas*, the Court of Appeals in *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 428 (Cal. Ct. App. 1997) held that state law authorizes local governments in California to impose additional licensing requirements on firearms dealers,<sup>16</sup>

*Whereas*, FFLs are required by federal law to comply with all state and local dealer laws as a condition for retaining their federal licenses,<sup>17</sup>

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<sup>9</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000), available at: [www.atf.gov/pub/fire-explo\\_pub/pdf/followingthegun\\_internet.pdf](http://www.atf.gov/pub/fire-explo_pub/pdf/followingthegun_internet.pdf).

<sup>10</sup> *Id.* at x.

<sup>11</sup> Brady Center to Prevent Gun Violence, *U.S. Gun Shops “Lost” More than 30,000 Firearms Last Year*, June 17, 2008, available at: <http://www.bradycenter.org/media/release.php?release=988>.

<sup>12</sup> Brady Center to Prevent Gun Violence, “*Trivial Violations?*” *The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers* 1 (Sept. 2006), available at: [www.bradycenter.org/xshare/pdf/reports/trivial-violations.pdf](http://www.bradycenter.org/xshare/pdf/reports/trivial-violations.pdf).

<sup>13</sup> Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Commerce in Firearms in the United States* 16 (Feb. 2000), available at: [www.mayorsagainstillegalguns.org/downloads/pdf/Commerce\\_in\\_Firearms\\_2000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Commerce_in_Firearms_2000.pdf).

<sup>14</sup> The total number of federal firearms licensees in California as of November 24, 2008 was provided by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.

<sup>15</sup> See Penal Code §§ 12070-12071.

<sup>16</sup> The court in *Suter* struck down a provision of Lafayette’s ordinance imposing additional security requirements on firearms dealers. That part of the opinion has been superseded by the adoption of Cal. Penal Code § 12071(b)(15).

*Whereas*, the International Association of Chiefs of Police recommends that local governments impose their own licensing requirements on firearms dealers because local requirements can respond to specific community concerns, and local review of licensees provides additional resources to identify and stop corrupt dealers,<sup>18</sup>

*Whereas*, no federal or California law imposes security requirements on firearms dealers or ammunition sellers during business hours or requires firearms dealers or ammunition sellers to install burglar alarms or surveillance cameras. California law explicitly allows local jurisdictions to impose security requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law,<sup>19</sup>

*Whereas*, no federal or California law requires agents and employees of firearms dealers or ammunition sellers to undergo background checks. California law explicitly permits local jurisdictions to require firearms dealers to perform such background checks,<sup>20</sup>

*Whereas*, no federal or California law requires firearms dealers to obtain liability insurance, prohibits firearms dealers or ammunition sellers from operating in residential neighborhoods or near schools, daycare centers, or parks, or requires firearms dealers or ammunition sellers to obtain a land use permit,

*Whereas*, California law requires firearms dealers to report the loss or theft of any firearm within 48 hours of discovery to the local law enforcement agency where the dealer's business premises are located, but does not otherwise require dealers to provide inventory reports to local law enforcement agencies,<sup>21</sup>

*Whereas*, according to a survey of local jurisdictions in California conducted in 2000 by Legal Community Against Violence (LCAV):

- 29 cities and three counties in California require firearms dealers to obtain a license or permit,
- 21 cities and two counties in California require firearms dealers to obtain liability insurance,
- 34 cities and four counties in California prohibit firearms dealers in residential areas,
- 14 cities and two counties in California prohibit firearms dealers near sensitive areas, such as daycare facilities, schools, parks, places of worship and community/recreation centers, and
- 31 cities and two counties in California require firearms dealers to conduct background checks on employees,<sup>22</sup>

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<sup>17</sup> 18 U.S.C. § 923(d)(1)(F).

<sup>18</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (Sept. 2007), available at: <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=302>.

<sup>19</sup> Cal. Penal Code § 12071(b)(15).

<sup>20</sup> Cal. Penal Code § 12071(b)(20).

<sup>21</sup> Cal. Penal Code § 12071(b)(13).

<sup>22</sup> For lists of the jurisdictions with each of these requirements and prohibitions mentioned, see LCAV's publication, *Communities on the Move 2000: How California Communities Are Addressing the Epidemic of*

## Findings Regarding Public Support for the Regulation of Firearms Dealers

*Whereas*, a national poll conducted in March and April 2008 found that:

- 91% of Americans and 88% of gun owners favor requiring gun stores to perform background checks on employees;
- 86% of Americans and 83% of gun owners favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns;
- 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft; and
- 74% of Americans favor requiring gun retailers to videotape all gun sales,<sup>23</sup>

*Whereas*, in a nationwide poll conducted in January of 2007, 86% of gun owners reported that a gun store's decision to videotape all gun sales would not impact their decision to buy a gun at that store,<sup>24</sup>

## Findings Regarding the Regulation of Ammunition Sellers

*Whereas*, federal law prohibits possession of ammunition by the same categories of persons it prohibits from possessing firearms,<sup>25</sup>

*Whereas*, California law requires licensed firearms dealers to create and maintain records of firearms sales.<sup>26</sup> No federal or California law requires ammunition sellers to create or maintain records of ammunition sales,

*Whereas*, California law requires persons who sell, loan or transfer firearms within California to obtain a license, but does not require persons who sell, loan or transfer ammunition to do so,<sup>27</sup>

*Whereas*, the Cities of Berkeley, Los Angeles, Richmond, Sacramento, and San Francisco are among the jurisdictions that now require sellers of ammunition to obtain a license or permit,

*Whereas*, 13 cities (Beverly Hills, Hayward, Inglewood, Los Angeles, Oakland, Pomona, Sacramento, San Anselmo, San Francisco, Santa Ana, Santa Monica, Tiburon, and West Hollywood), and two counties (Contra Costa and Marin) require ammunition sellers to keep records of their ammunition sales,

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*Handgun Violence*," available at: [http://www.lcav.org/library/surveys\\_local\\_ordrs/com2000\\_pdf.pdf](http://www.lcav.org/library/surveys_local_ordrs/com2000_pdf.pdf). Please note that jurisdictions may have amended their ordinances since LCAV conducted that survey. For example, the City of Inglewood now prohibits firearms dealers in residential areas, but is not listed as such in that survey. LCAV has not completed an exhaustive search for ordinances requiring sellers of ammunition to obtain a license or permit.

<sup>23</sup> Greenberg Quinlan Rosner Research and the Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, April 10, 2008, available at:

[http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf).

<sup>24</sup> Greenberg Quinlan Rosner Research & The Tarrance Group for the Mayors Against Illegal Guns, *Strong Public Support for Tough Enforcement of Common Sense Gun Laws (Graphs)*, January 23, 2007, available at:

[http://www.greenbergresearch.com/articles/1849/2630\\_MAIGslides.pdf](http://www.greenbergresearch.com/articles/1849/2630_MAIGslides.pdf).

<sup>25</sup> 18 U.S.C. § 922(g).

<sup>26</sup> Cal. Penal Code § 12076(b).

<sup>27</sup> Cal. Penal Code § 12070(a).

*Whereas*, law enforcement agencies in jurisdictions that require ammunition sellers to keep records of their ammunition sales have been able to detect illegal possessors of firearms and ammunition by cross-referencing the information in these records with California Department of Justice-maintained information regarding persons prohibited from such possession,

*Whereas*, a two-month study of Los Angeles' ordinance requiring ammunition purchasers to present identification prior to purchase and requiring ammunition sellers to maintain a sales log found that prohibited purchasers accounted for nearly 3% of all ammunition purchasers over this period, acquiring roughly 10,000 rounds of ammunition,<sup>28</sup>

*Whereas*, the Los Angeles ordinance led to 30 investigations, 15 search warrants, nine arrests, and the confiscation of 24 handguns, 12 shotguns, and nine rifles that were illegally possessed between 2004 and the first half of 2006, as well as 39 investigations in 2007, and at least 24 investigations in 2008,<sup>29</sup>

*Whereas*, a report issued one year after Sacramento enacted an ordinance requiring ammunition sellers to record the thumbprint of each purchaser and to electronically transmit the records of ammunition sales to the Sacramento Police Department ("SPD") found that:

- The SPD and allied agencies use the information gathered as a result of the ordinance in criminal investigations regularly,
- These requirements have allowed the SPD to electronically check the legal firearms rights status of transferees, and
- The electronic system for transfer of purchaser information has proven to be secure, effective and reliable,<sup>30</sup>

*Whereas*, between January 16 and December 31, 2008, the Sacramento ordinance led to the identification of 156 prohibited persons who had purchased ammunition, 124 of whom had prior felony convictions, 48 search warrants and 26 additional probation or parole searches. In addition, the ordinance led to 109 felony charges, 10 federal court indictments, 37 felony convictions and 17 misdemeanor convictions. The ordinance allowed law enforcement to seize a total of 84 firearms, including seven assault weapons, and thousands of rounds of ammunition,<sup>31</sup>

*Therefore*, the jurisdiction/governing body hereby adopts the following:

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<sup>28</sup> George E. Tita et al., *The Criminal Purchase of Ammunition*, 12 *Inj. Prevention* 308, 308 (2006).

<sup>29</sup> LCAV obtained these numbers from Lieutenant Steve Nielsen of the Los Angeles Police Department's Gun Unit in May 2007 and May 2008.

<sup>30</sup> Sacramento, Cal., City Code, Chapters 5.64, 5.66; Sacramento Chief of Police Rick Braziel et al., *Report to Council, Ammunition Sales Records Study* (Aug. 12, 2008), at:

[http://sacramento.granicus.com/MapView.php?view\\_id=8&clip\\_id=1590&meta\\_id=155275](http://sacramento.granicus.com/MapView.php?view_id=8&clip_id=1590&meta_id=155275).

<sup>31</sup> These statistics were obtained from Captain Jim Maccoun, Office of Technical Services, Sacramento Police Department on January 27, 2009. For the statistics for the period between January 16 and June 29, 2008, see *id.*

## ARTICLE 1 SALE OF FIREARMS AND AMMUNITION

### Sec. 1 Definitions

“Applicant” means any person who applies for a law enforcement permit, or the renewal of such a permit, to sell, lease or transfer firearms, firearm components, or ammunition.

“Chief of Police/Sheriff” means the Chief of Police/Sheriff or the Chief’s/Sheriff’s designated representative.

“Firearm” means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of explosion or other means of combustion.

“Ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof.

“Permittee” means any person, corporation, partnership or other entity engaged in the business of selling, leasing, or otherwise transferring any firearm, firearm component, or ammunition, which person or entity has obtained a law enforcement permit to sell, lease or transfer firearms, firearm components, or ammunition.

### Sec. 2 Law enforcement permit and employee background checks

*[This model requires both firearms dealers and ammunition sellers to obtain a land use permit as well as a law enforcement permit. Alternatively, jurisdictions may choose to make the land use permit requirement in Article 2 of this model applicable only to firearms dealers, and not to persons and entities that sell only ammunition.]*

(a) It is unlawful for any person, corporation, partnership or other entity to engage in the business of selling, leasing, or otherwise transferring any firearm, firearm component, or ammunition without a law enforcement permit, as required by this Article, and a land use permit, as required by Article 2.

(b) For purposes of this Chapter, a person “engaged in the business” of selling or transferring ammunition includes a person who sells or transfers more than 50 rounds of ammunition in any month.

### Sec. 3 Application

(a) An applicant for a permit or renewal of a permit under this Article shall file with the Chief of Police/Sheriff an application in writing, signed under penalty of perjury, on a form prescribed by the City/County. The applicant shall provide all relevant information requested to demonstrate compliance with this Article, including:

(1) The applicant’s name, including any aliases or prior names, age and address;

- (2) The applicant's federal firearms license and California firearms dealer numbers, if any;
- (3) The address of the proposed location for which the permit is sought, together with the business name, and the name of any corporation, partnership or other entity that has any ownership in, or control over, the business;
- (4) The names, ages and addresses of all persons who will have access to or control of workplace firearms, firearm components, or ammunition, including but not limited to, the applicant's employees, agents and/or supervisors, if any;
- (5) A certificate of eligibility from the state Department of Justice under Penal Code Section 12071 for each individual identified in Sec. 3(a)(4) demonstrating that the person is not prohibited by state or federal law from possessing firearms or ammunition;
- (6) Proof of a possessory interest in the property at which the proposed business will be conducted, as owner, lessee or other legal occupant, and, if the applicant is not the owner of record of the real property upon which, the applicant's business is to be located and conducted, the written consent of the owner of record of such real property to the applicant's proposed business;
- (7) A floor plan of the proposed business which illustrates the applicant's compliance with security provisions, as outlined in Sec. 6 of this Article;
- (8) Proof of the issuance of a land use permit at the proposed location;
- (9) Proof of compliance with all applicable federal, state and local licensing and other business laws;
- (10) Information relating to every license or permit to sell, lease, transfer, purchase, or possess firearms, firearm components or ammunition which was sought by the applicant from any jurisdiction in the United States, including, but not limited to, the date of each application and whether it resulted in the issuance of a license, and the date and circumstances of any revocation or suspension;
- (11) The applicant's agreement to indemnify, defend and hold harmless the City/County, its officers, agents and employees from and against all claims, losses, costs, damages and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or intentional or willful misconduct of:
  - (A) The applicant;
  - (B) The applicant's officers, employees, agents and/or supervisors; or
  - (C) If the business is a corporation, partnership or other entity, the officers, directors or partners.

(12) Certification of satisfaction of insurance requirements, for applicants applying for a permit to sell firearms or firearm components;

(13) The date, location and nature of all criminal convictions of the applicant, if any, in any jurisdiction in the United States.

(b) The application shall be accompanied by a nonrefundable fee for administering this Article as established by City Council/County Board of Supervisors resolution.

#### **Sec. 4 Investigation by Chief of Police/Sheriff**

(a) The Chief of Police/Sheriff shall conduct an investigation to determine, for the protection of the public health and safety, whether the law enforcement permit may be issued or renewed. The Chief of Police/Sheriff shall require the following individuals to provide fingerprints, a recent photograph, a signed authorization for the release of pertinent records, and any additional information which the Chief of Police/Sheriff considers necessary to complete the investigation:

(1) The applicant;

(2) All persons who will have access to or control of workplace firearms, firearm components or ammunition, including but not limited to the applicant's employees, agents and/or supervisors, if any.

(b) Prior to issuance or renewal of the permit, the Chief of Police/Sheriff shall inspect the premises to ensure compliance with this Article.

(c) The Chief of Police/Sheriff may grant or renew a law enforcement permit if the applicant or permittee is in compliance with this Article and all other applicable federal, state and local laws.

#### **Sec. 5 Grounds for permit denial or revocation**

(a) The Chief of Police/Sheriff shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the operation of the business would not or does not comply with federal, state or local law, or if the applicant or permittee:

(1) Is under 21 years of age;

(2) Is not licensed as required by all applicable federal, state and local laws; [*A jurisdiction may choose to replace this language with: “(2) Is not licensed as a dealer in firearms under all applicable federal, state and local laws.” This option would prohibit the sale of ammunition by persons not engaged in the business of selling firearms, such as hardware and convenience stores.*]

(3) Has made a false or misleading statement of a material fact or omission of a material fact in the application for a law enforcement permit, or in any other documents

submitted to the Chief of Police/Sheriff pursuant to this Article. If a permit is denied on this ground, the applicant is prohibited from reapplying for a permit for a period of five years;

(4) Has had a license or permit to sell, lease, transfer, purchase or possess firearms or ammunition from any jurisdiction in the United States revoked, suspended or denied for good cause within the immediately preceding five years;

(5) Has been convicted of:

(A) An offense which disqualifies that person from owning or possessing a firearm under federal, state or local law, including, but not limited to, the offenses listed in Penal Code Sections 12021 and 12021.1;

(B) An offense relating to the manufacture, sale, possession or use of a firearm or dangerous or deadly weapon or ammunition therefor;

(C) An offense involving the use of force or violence upon the person of another;

(D) An offense involving theft, fraud, dishonesty or deceit;

(E) An offense involving the manufacture, sale, possession or use of a controlled substance as defined by the state Health and Safety Code;

(6) Is within a class of persons defined in Welfare and Institutions Code Sections 8100 or 8103; or

(7) Is currently, or has been within the past five years, an unlawful user of or addicted to a controlled substance as defined by the Health and Safety Code.

(b) Employees, agents or supervisors of the applicant or permittee may not have access to or control over workplace firearms, firearm components or ammunition until the Chief of Police/Sheriff has conducted an investigation pursuant to Sec. 4(a)(2), and verified that none of the conditions listed in Sec. 5(a)(1), (4), (5), (6) or (7) exist, as applied to those employees, agents or supervisors. A new law enforcement investigation and background verification of such persons must be conducted each time the permittee renews his or her permit, or applies for a new permit. Except as provided in subsection (c), the Chief of Police/Sheriff shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the applicant or permittee allows any employee, agent or supervisor to have access to or control over workplace firearms, firearm components or ammunition prior to the completion of the law enforcement investigation and background verification of those persons, or if those persons have not undergone the law enforcement investigation and background verification process within the last 365 days.

(c) Where an applicant is applying for a law enforcement permit to sell, lease or transfer firearms, firearm components or ammunition within the first 90 days of the effective date of this

Article, and where the applicant has a pre-existing firearms dealer business which complies with all applicable federal, state and local laws, or is not a firearms dealer but is already engaged in the sale of ammunition:

(1) The applicant's current employees, agents or supervisors may continue to have access to or control over workplace firearms, firearm components and ammunition pending the completion of the Chief of Police's/Sheriff's investigation and background verification.

(2) Where one or more of the applicant's employees, agents or supervisors are found to be in violation of the conditions enumerated in subsection (b), the applicant shall have 21 days from the mailing of written notification from the Chief of Police/Sheriff to verify that such persons have been removed or reassigned so that they no longer have access to or control of workplace firearms, firearm components or ammunition. Failure of the applicant to comply with this subsection shall cause the Chief of Police/Sheriff to deny the application for a law enforcement permit.

(d) The law enforcement permit of any person or entity found to be in violation of any of the provisions of this Article may be revoked.

## **Sec. 6 On-site security**

(a) If the proposed or current business location is to be used for the sale of firearms or firearm components, the permitted place of business shall be a secure facility within the meaning of Penal Code Section 12071(c)(2).<sup>32</sup>

(b) If the proposed or current business location is to be used for the sale of firearms or firearm components, all heating, ventilating, air-conditioning, and service openings shall be secured with steel bars or metal grating.

(c) Any time a permittee is not open for business, every firearm or firearm component shall be stored in one of the following ways:

(1) In a locked fireproof safe or vault in the licensee's business premises that meets the standards for a gun safe implemented by the Attorney General pursuant to Penal Code Section 12088.2; or

(2) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that

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<sup>32</sup> A "secure facility" is defined by Penal Code § 12071(c)(2) as a building that meets certain specifications, including: certain types of locks on all doorways; steel bars on all windows; and steel bars, metal grating, or an alarm system on all heating, ventilating, air-conditioning, and service openings. State law allows a firearms dealer to avoid these requirements by utilizing other security features. See Penal Code § 12071(b)(14). Penal Code § 12071(b)(15) explicitly allows local jurisdictions to impose security requirements on firearms dealers that are stricter or at a higher standard than those imposed by state law

prevents the removal of the firearm from the premises. No more than five firearms may be affixed to any one rod or cable at any time.

(d) Any time a permittee is open for business, every firearm shall be unloaded, inaccessible to the public and secured using one of the following three methods, except in the immediate presence of and under the direct supervision of an employee of the permittee:

(1) Secured within a locked case so that a customer seeking access to the firearm must ask an employee of the permittee for assistance;

(2) Secured behind a counter where only the permittee and the permittee's employees are allowed. During the absence of the permittee or a permittee's employee from the counter, the counter shall be secured with a locked, impenetrable barrier that extends from the floor or counter to the ceiling; or

(3) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises. No more than five firearms may be affixed to any one rod or cable at any time.

(e) Any time a permittee is open for business, every firearm component and all ammunition shall be inaccessible to the public and secured using one of the methods mentioned in subsection (d)(1) or (2), except in the immediate presence of and under the direct supervision of an employee of the permittee.

(f) The permitted business location shall be secured by an alarm system that is installed and maintained by an alarm company operator licensed pursuant to the Alarm Company Act, Business & Professions Code Sections 7590 *et seq.* The alarm system must be monitored by a central station listed by Underwriters Laboratories, Inc., and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a #3 extent of protection.<sup>33</sup>

(g) The permitted business location shall be monitored by a video surveillance system that meets the following requirements:

(1) The system shall include cameras, monitors, digital video recorders, and cabling, if necessary.

(2) The number and location of the cameras are subject to the approval of the Chief of Police/Sheriff. At a minimum, the cameras shall be sufficient in number and location to monitor the critical areas of the business premises, including, but not limited to, all

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<sup>33</sup> Underwriters Laboratories, Inc. uses the term "extent of protection" to refer to the amount of alarm protection installed to protect a particular area, room or container. Systems with a #3 extent of protection include complete protection for all accessible openings, and partial motion and sound detection at certain other areas of the premises. For more information, see Central Station Alarm Association, *A Practical Guide to Central Station Burglar Alarm Systems* (3rd ed. 2005).

places where firearms, firearm components or ammunition are stored, handled, sold, transferred, or carried, including, but not limited to, all counters, safes, vaults, cabinets, cases, entryways, and parking lots. The video surveillance system shall operate continuously, without interruption, whenever the permittee is open for business. Whenever the permittee is not open for business, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area.

(2) In addition, the sale or transfer of a firearm, firearm component or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible.

(3) When recording, the video surveillance system shall record continuously and store color images of the monitored area at a frequency of not less than 15 frames per second.<sup>34</sup> The system must produce retrievable and identifiable images and video recordings on media approved by the Chief of Police/Sheriff that can be enlarged through projection or other means, and can be made a permanent record for use in a criminal investigation. The system must be capable of delineating on playback the activity and physical features of persons or areas within the premises.

(4) The stored images shall be maintained on the business premises of the permittee for a period not less than one year from the date of recordation and shall be made available for inspection by federal, state or local law enforcement upon request.

(5) The video surveillance system must be maintained in proper working order at all times. If the system becomes inoperable, it must be repaired or replaced within fifteen calendar days. The permittee must inspect the system at least weekly to ensure that it is operational and images are being recorded and retained as required.

(6) The permittee shall post a sign in a conspicuous place at each entrance to the premises that states: THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED.

(h) The Chief of Police/Sheriff may impose security requirements in addition to those listed in this section prior to issuance of the law enforcement permit. Failure to fully comply with the requirements of this section shall be sufficient cause for denial or revocation of the law enforcement permit by the Chief of Police/Sheriff.

## **Sec. 7 Liability insurance**

(a) If the proposed or current business location is to be used for the sale of firearms or firearm components, no law enforcement permit shall be issued or reissued unless there is in effect a policy of insurance in a form approved by the City/County and executed by an insurance company approved by the City/County, insuring the applicant against liability for damage to

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<sup>34</sup> Television in the U.S. has 30 frames per second. However, 15 frames per second is generally described as viewable, and is used in similar regulations. See, e.g., 02-392-013 Me. Code R. 6(6).

property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm, firearm component or ammunition, or any other operations of the business. The policy shall also name the City/County and its officers, employees and agents as additional insureds. The limits of liability shall not be less than \$1,000,000 for each incident of damage to property or incident of injury or death to a person; provided, however, that increased limits of liability may be required by the City Attorney/County Counsel if deemed necessary.

(b) The policy of insurance shall contain an endorsement providing that the policy shall not be canceled until written notice has been given to the City Manager/County Administrator at least 30 days prior to the time the cancellation becomes effective.

(c) Upon expiration of the policy of insurance, and if no additional insurance is obtained, the law enforcement permit is considered revoked without further notice.

#### **Sec. 8 Location of business premises**

(a) The business shall be carried on only in the building located at the street address shown on the permit. This requirement does not prohibit the permittee from participating in a gun show or event which is authorized by federal, state and local law upon compliance with those laws.

(b) The business premises shall not be located in any district or area that is zoned for residential use, or within 1,500 feet of any school, pre-school, day-care facility, park, community center, place of worship, liquor store, bar, youth center, video arcade, amusement park (not including a temporary carnival or similar event), other permittee as defined in Sec. 1 or residentially zoned district or area.

#### **Sec. 9 Ammunition sales records**

(a) No permittee or any agents, employees, or other persons acting under the permittee's authority shall sell or otherwise transfer ownership of any ammunition without recording the following information on a form to be provided by the Chief of Police/Sheriff:

- (1) The date of the transaction;
- (2) The name, address and date of birth of the transferee;
- (3) The transferee's driver's license or other identification number and the state in which it was issued;
- (4) The brand, type and amount of ammunition transferred;
- (5) The transferee's signature; and
- (6) The name of the permittee or permittee employee who processed the transaction.

(b) The permittee and any agents, employees, or other persons acting under the permittee's authority shall also, at the time of purchase or transfer, obtain the right thumbprint of the transferee on the above form.

(c) Within five calendar days of a firearm ammunition transfer, the permittee and any agents, employees, or other persons acting under the permittee's authority shall electronically transmit to the Police/Sheriff's Department all of the information set forth in paragraph (a). The electronic transmittal shall be by a method, and in a format, approved by the Chief of Police/Sheriff.

(d) The records created in accordance with this section must be maintained on the business premises of the permittee for a period not less than five years from the date of the recorded transfer and shall be made available for inspection by federal, state or local law enforcement upon request.

(e) Within one year of the effective date of this section, the Chief of Police/Sheriff shall submit a report to the City Council/County Board of Supervisors regarding the ammunition sales records maintained since the effective date of this section. The report shall state information including, but not limited to: the number of prohibited persons who had purchased ammunition and who were identified through use of these records, as well as the number of searches, arrests, and investigations performed, charges filed, convictions obtained and firearms, firearm components and ammunition seized, as a result of these records.

#### **Sec. 10        Restricted admittance of minors and other prohibited purchasers**

(a) Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow the following persons to enter into or remain on the premises unless accompanied by his or her parent or legal guardian:

(1) Any person under 21 years of age, if the permittee sells, keeps or displays firearms capable of being concealed on the person; or

(2) Any person under 18 years of age, if the permittee sells, keeps or displays only firearms other than firearms capable of being concealed on the person.

(b) Where firearm sales activity is the primary business performed at the business premises, the permittee and any of his or her agents, employees, or other persons acting under the permittee's authority shall be responsible for requiring clear evidence of age and identity of persons to prevent the entry of persons not permitted to enter the premises pursuant to subsection (a) by reason of age. Clear evidence of age and identity includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, or an employment identification card which contains the bearer's signature, photograph and age, or any similar documentation which provides reasonable assurance of the identity and age of the individual.

(c) The permittee shall post the following conspicuously at each entrance to the establishment in block letters not less than one inch in height:

(1) If the permittee sells, keeps or displays firearms capable of being concealed on the person, the sign shall state, "FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 21 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

(2) If the permittee sells, keeps or displays only firearms other than firearms capable of being concealed on the person, the sign shall state, "FIREARMS ARE KEPT, DISPLAYED OR OFFERED ON THE PREMISES, AND PERSONS UNDER THE AGE OF 18 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

(d) Where firearm sales activity is the primary business performed at the business premises, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow any person to enter into or remain on the premises who the permittee or any of his or her agents, employees, or other persons acting under the permittee's authority knows or has reason to know is prohibited from possessing or purchasing firearms pursuant to federal, state, or local law.

#### **Sec. 11 Inventory reports**

Within the first five business days of April and October of each year, the permittee shall cause a physical inventory to be taken that includes a listing of each firearm and firearm component held by the permittee by make, model, and serial number, together with a listing of each firearm and firearm component the permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen that is required to be reported pursuant to Penal Code Section 12071(b)(13). Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the Chief of Police/Sheriff, by such means as specified by the Chief of Police/Sheriff. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms and firearm components reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the law enforcement permit was issued for a period of not less than five years from the date of the inventory and shall make the copy available for inspection by federal, state or local law enforcement upon request.

#### **Sec. 12 Display of law enforcement permit**

The law enforcement permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can be easily seen by those entering the premises.

#### **Sec. 13 Issuance of law enforcement permit – Duration**

(a) A law enforcement permit expires one year after the date of issuance. A permit may be renewed for additional one-year periods if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by City Council/County Board of

Supervisors resolution. Renewal of the permit is contingent upon the permittee's compliance with the terms and conditions of the original application and permit, as detailed in this Article. Police/Sheriff's department personnel shall inspect the permitted business premises for compliance with this Article prior to renewal of the permit. The renewal application and the renewal fee must be received by the Police/Sheriff's department no later than 45 days before the expiration of the current permit.

(b) A decision regarding issuance or renewal of the law enforcement permit may be appealed in the manner provided in Sec. 19 of this Article.

#### **Sec. 14 Nonassignability**

A law enforcement permit issued under this Article is not assignable. Any attempt to assign a law enforcement permit shall result in revocation of the permit.

#### **Sec. 15 Compliance by existing businesses**

A person engaged in the business of selling, leasing, or otherwise transferring any firearm, firearm component, or ammunition on the effective date of this Article shall, within 90 days of the effective date, comply with this Article. However, any person whose business is located in any location described in Sec. 8 of this Article may continue to sell, lease, or transfer firearms, firearm components, or ammunition for up to one year after the effective date of this Article. After the one-year period has expired, all such persons are prohibited from selling, leasing or transferring firearms, firearm components, or ammunition in the named locations.

#### **Sec. 16 Law enforcement inspections**

Permittees shall have their places of business open for inspection by federal, state and local law enforcement during all hours of operation. The Police/Sheriff's department shall conduct periodic inspections of the permittee's place of business without notice. Permittees shall maintain all records, documents, firearms, firearm components and ammunition in a manner and place accessible for inspection by federal, state and local law enforcement.

#### **Sec. 17 Warning regarding secondary sales**

A permittee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height: WITH FEW EXCEPTIONS, IT IS A CRIME TO SELL OR GIVE A FIREARM TO SOMEONE WITHOUT COMPLETING A DEALER RECORD OF SALE (DROS) FORM AT A LICENSED FIREARMS DEALERSHIP.

#### **Sec. 18 Penalties**

*[Penalties for the violation of provisions of this ordinance may vary based on the law enforcement and policy needs of each community. Jurisdictions are encouraged to consult with local law enforcement to develop appropriate penalties. While the language below makes each violation of any provision of this Article a misdemeanor, jurisdictions may choose to make violations of particular provisions an infraction instead.]*

(a) Any person violating any of the provisions of this Article shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Article shall be punished by a fine of not more than \$1,000 or by imprisonment for a period not exceeding six months, or by both. Each such person shall be guilty of a separate offense for each and every day during any portion of which a violation of any provision of this Article is committed or continued by such person and shall be punishable accordingly.

(b) In addition to any other penalty or remedy, the City Attorney/County Counsel may commence a civil action to seek enforcement of these provisions.

#### **Sec. 19 Report of permit revocation to federal and state authorities**

In addition to any other penalty or remedy, the City Attorney/County Counsel shall report any person or entity whose law enforcement permit is revoked pursuant to this Article to the Bureau of Firearms of the California Department of Justice and the Bureau of Alcohol, Tobacco, Firearms & Explosives within the U.S. Department of Justice.

#### **Sec. 20 Hearing for permit denial or revocation**

(a) Within ten days of the Chief of Police/Sheriff mailing a written denial of the application or revocation of the permit, the applicant may appeal by requesting a hearing before the Chief of Police/Sheriff. The request must be made in writing, setting forth the specific grounds for appeal. If the applicant submits a timely request for an appeal, the Chief of Police/Sheriff shall set a time and place for the hearing within 30 days.

(b) The Chief of Police/Sheriff shall provide a written decision regarding the appeal within 14 calendar days of the hearing. An applicant may appeal the decision of the Chief of Police/Sheriff to the **[appropriate government body. The appeal process should also be detailed or referenced here]**.

#### **Sec. 21 Severability clause**

If any section, subsection, sentence or clause of this Article is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Article or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this Article notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

## ARTICLE 2 LAND USE PERMITS

*[This model requires both firearms dealers and ammunition sellers to obtain a land use permit as well as a law enforcement permit. Alternatively, jurisdictions may choose to make the land use permit requirement in Article 2 of this model applicable only to firearms dealers, and not to persons and entities that sell only ammunition.]*

### Sec. 1 Firearm and ammunition sales

- (a) Purpose. The purpose of this section is to provide for the appropriate location of any person, corporation, partnership or other entity engaging in the business of selling, leasing, or otherwise transferring any firearm, firearm component or ammunition (hereinafter “firearms dealer or ammunition seller”) through the permitting process.
- (b) Permit Requirement. It is unlawful for any firearms dealer or ammunition seller to sell, lease or transfer firearms, firearm components or ammunition unless the dealer or seller has obtained a land use permit pursuant to this chapter and a law enforcement permit as provided under Article 1 of this chapter. Subject to the restrictions listed below, firearms dealers and ammunition sellers are permitted in **[enumerate permitted districts, e.g., commercial, industrial, etc.]**. Firearms dealers and ammunition sellers are prohibited in all other land use districts.
- (c) Procedure. An applicant for a land use permit shall apply to the planning commission by application prescribed by the City/County in the manner provided.
- (d) Location. A land use permit for the sale of firearms, firearm components or ammunition will not be issued if the proposed business premises are located in any district or area that is zoned for residential use, or within 1,500 feet of any school, pre-school, day-care facility, park, community center, place of worship, liquor store, bar, youth center, video arcade, amusement park (not including a temporary carnival or similar event), other firearms dealer or ammunition seller or residentially zoned district or area.
- (e) Other Criteria. The planning commission shall approve or conditionally approve a land use permit application only if, on the basis of the application, plans, materials, and testimony submitted at the hearing, the planning commission finds:
- (1) The location of the proposed land use is in accordance with the general plan of City/County; and
  - (2) The location, size, design, and operating characteristics of the proposed use will be compatible with and will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the proposed land use and the surrounding neighborhood.
- (f) Public Hearing and Notice Required. A public hearing shall be held with reference to an application for a land use permit. Notice for the public hearing shall be set forth as follows:

- (1) The contents of a public notice must include the following:
  - (A) Date, time, and place of the public hearing;
  - (B) Identity of the hearing body or hearing officer;
  - (C) General explanation of the matter to be considered and where more specific information may be obtained;
  - (D) General description in text or by diagram of the location of the real property/parcel or building which is the subject of the hearing; and
  - (E) A statement that any interested party or agent may appear and be heard.
- (2) **[Insert any additional desired notice provisions.]**

(g) Conditions. An approved land use permit is not effective until the applicant satisfies the following terms and conditions:

- (1) Possession of a valid law enforcement permit as required under Article 1;
- (2) Possession of all licenses and permits required by federal, state and local law; and
- (3) Compliance with the requirements of the City's/County's building code, fire code and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure. The use permit shall require that the applicant obtain a final inspection from the City/County building official demonstrating code compliance before the applicant may begin business at the premises at issue.

## **Sec. 2 Nonconforming uses**

A firearms dealer or ammunition seller located in any location described in Sec. 1(d) may continue to sell, lease or transfer firearms, firearm components and ammunition for up to one year after the effective date of this Article, provided the dealer or seller obtains a law enforcement permit from the City/County, pursuant to Article 1, within 90 days of the effective date of that Article. After the one-year period has expired, all firearms dealers and ammunition sellers are prohibited from selling, leasing or transferring firearms, firearm components and ammunition in the named locations.

## **Sec. 3 Severability clause**

If any section, subsection, sentence or clause of this Article is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Article or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this Article notwithstanding the unconstitutionality,

invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.



## II. Common Legal Challenges to Gun Violence Prevention Laws

Litigation challenging firearm laws has become a routine strategy of the gun industry, the National Rifle Association and other “gun rights” groups. These challenges sometimes raise the following issues: (1) the Second Amendment to the U.S. Constitution and state right to bear arms provisions; (2) equal protection; (3) due process; (4) the privilege against self-incrimination; and (5) in the context of local gun regulations, preemption and local authority to regulate firearms. This section provides an overview of these issues.

### A. The Second Amendment and State Right to Bear Arms

The Second Amendment and state right to bear arms provisions are often raised as a bar to gun violence prevention laws and regulations. In fact, these provisions permit a broad range of gun violence prevention measures.

#### 1. The Second Amendment

The Second Amendment to the U.S. Constitution states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Until recently, the courts, including the United States Supreme Court, interpreted and applied the Amendment to protect a right to keep and bear arms only in relation to service in a well-regulated militia.<sup>35</sup> However, the Supreme Court issued a historic decision in *District of Columbia v. Heller* on June 26, 2008, holding that the Second Amendment confers an individual right to possess handguns in the home for self-defense, unrelated to service in a well-regulated state militia.<sup>36</sup>

In *Heller*, the Court struck down the District’s ban on handgun possession, finding that “the inherent right of self-defense has been central to the Second Amendment” and that handguns are “overwhelmingly chosen by American society” for self-defense in the home, “where the need for defense of self, family, and property is most acute.”<sup>37</sup> The Court also struck down the District’s requirement that firearms in the home be stored unloaded and disassembled or bound by a trigger lock or similar device, because the law contained no exception for self-defense.

Although the *Heller* decision established a new individual right to “keep and bear arms,” the opinion made it clear that the right is not unlimited, and should not be understood as “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>38</sup>

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<sup>35</sup> Prior to June 2008, the U.S. Supreme Court last addressed the scope of the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939). In that case, the Court rejected a Second Amendment challenge brought by two individuals charged with violating a federal law prohibiting the interstate transportation of sawed-off shotguns. The Court held that the “obvious purpose” of the Amendment is to “assure the continuation and render possible the effectiveness” of the state militia, and the Amendment “must be interpreted and applied with that end in view.” *Id.* at 178. After *Miller*, the scope of the Second Amendment was addressed in more than 200 federal and state appellate cases. These decisions overwhelmingly rejected Second Amendment challenges to firearm laws. See LCAV’s web site, [www.lcav.org](http://www.lcav.org), for summaries of over 200 federal and state appellate cases prior to *District of Columbia v. Heller* rejecting Second Amendment challenges to firearms laws.

<sup>36</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

<sup>37</sup> *Id.* at 2817.

<sup>38</sup> *Id.* at 2816.

The Court provided examples of gun laws that it deems “presumptively lawful” under the Second Amendment, including those which:

- Prohibit the possession of firearms by felons and the mentally ill;
- Forbid firearm possession in sensitive places such as schools and government buildings; and
- Impose conditions and qualifications on the commercial sale of firearms.

The Court made clear that this list is not exhaustive.<sup>39</sup> The Court also concluded that the Second Amendment is consistent with laws banning “dangerous and unusual weapons” not “in common use at the time,” such as M-16 rifles and other firearms that are most useful in military service.<sup>40</sup> Finally, the Court declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.”<sup>41</sup>

The *Heller* decision failed to articulate a legal standard of review, or test, to be applied in evaluating other laws under the Second Amendment. In addition, because *Heller* considered laws of the District of Columbia (a federal enclave), the Court stated that the question of whether the Second Amendment applies to the states is “a question not presented by this case.”<sup>42</sup> While the *Heller* Court did not rule on whether the Second Amendment applies to state or local governments, the Court did note its earlier decisions holding that “the Second Amendment applies only to the Federal Government.”<sup>43</sup> However, subsequent to the decision in *Heller*, the Ninth Circuit Court of Appeals became the first circuit court in the country to hold that the Second Amendment is incorporated to apply to state and local governments through the Fourteenth Amendment.<sup>44</sup>

Although questions remain as to the standard of review, the *Heller* decision leaves no doubt that regulation of firearms remains legally permissible. Even after *Heller*, most common sense gun violence prevention measures, such as those contained in this model law, are likely to be upheld. As mentioned above, the Court made clear that the right to bear arms is not unlimited and that its list of presumptively lawful regulations was not exhaustive. Moreover, the Court specifically declared that its analysis should not cast doubt on laws imposing conditions and qualifications on the commercial sale of firearms.<sup>45</sup>

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<sup>39</sup> *Id.* at 2817 n.26.

<sup>40</sup> *Id.* at 2817.

<sup>41</sup> *Id.* at 2820. In addition, the *Heller* Court did not invalidate D.C.’s requirement that firearm owners be licensed. Mr. Heller’s attorney conceded that the licensing scheme was not, in itself, unlawful. Therefore, the Court did not address this requirement. *Id.* at 2819.

<sup>42</sup> *Id.* at 2813 n.23.

<sup>43</sup> *Id.*, citing *Miller v. Texas*, 153 U.S. 535, 538 (1894); *Presser v. Illinois*, 116 U.S. 252, 265 (1886); and *United States v. Cruikshank*, 92 U.S. 542 (1876). Following these decisions, lower courts considering challenges to state and local gun laws also have held that the Second Amendment constrains only the federal government, and not actions by state or local governments. See also LCAV’s website, [www.lcav.org](http://www.lcav.org), for additional appellate court cases reiterating this position.

<sup>44</sup> *Nordyke v. King*, No. 07-15763 (9th Cir. filed April 20, 2009). Courts in other jurisdictions have disagreed. See *Maloney v. Cuomo*, 2009 U.S. App. LEXIS 1402 (2d Cir. 2009); *NRA v. Village of Oak Park* 2008 U.S. Dist. LEXIS 98134 (N.D. Ill. 2008), *McDonald v. City of Chicago*, 2008 U.S. Dist. LEXIS 98133 (N.D. Ill. 2008) in which plaintiffs’ arguments that the Second Amendment should be applied to the states were rejected.

<sup>45</sup> *Heller*, 128 S. Ct. at 2816-2817.

## 2. State Right to Bear Arms

The constitutions of most states recognize a “right to bear arms.” However, the California Constitution contains no “right to bear arms” provision. In *Kasler v. Lockyer*, 2 P.3d 581, 586 (Cal. 2000), the California Supreme Court rejected a challenge to the state ban on assault weapons, confirming that “no mention is made in [the California Constitution] of a right to bear arms,” and “regulation of firearms is a proper police function.”

### **B. Equal Protection**

The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” However, when a law makes a classification neither “involving fundamental rights nor proceeding along suspect lines,” the law will withstand constitutional scrutiny so long as it bears a rational relationship to a legitimate governmental interest.<sup>46</sup>

In *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997), a firearms dealer brought an equal protection challenge against a law prohibiting minors from entering premises where the sale of firearms is the primary business performed at the site. The court held that “[b]ecause minors have a legitimate reason for entering sports or department stores that sell merchandise other than weapons or weapons-related goods, a rational basis exists for distinguishing between such businesses and those that primarily sell weapons.”<sup>47</sup> The dealer also claimed that the requirement that firearms dealers carry liability insurance was a denial of equal protection because it discriminates between firearms dealers and other businesses selling products that can and do cause injury, and because it fails to discriminate between firearms dealers on the basis of size and probable volume of sales. The court also rejected these claims.<sup>48</sup>

In *Koscielski v. Minneapolis*, 435 F.3d 898 (8th Cir. 2006), a firearms dealer brought an equal protection challenge against the City of Minneapolis’s zoning ordinance requiring firearms dealers to obtain conditional use permits and locate within particular zones and only in locations sufficiently distant from day care centers and churches. The court first held that the dealer’s claim involved neither a suspect classification nor a fundamental right. Therefore, the law would be found constitutional if it bore a rational relationship to a legitimate governmental interest. Upholding the law, the court concluded, “the implications for public safety warrant regulating and zoning firearms dealerships differently than other retail establishments.”<sup>49</sup>

The majority of cases also have rejected equal protection challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.<sup>50</sup>

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<sup>46</sup> *Heller v. Doe*, 509 U.S. 312, 320 (1993), see also *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). Classifications along “suspect lines” can include a suspect class (e.g., race) or quasi-suspect class (e.g., gender). See, e.g., *Lavia v. Pennsylvania*, 224 F.3d 190, 200 (3d Cir. 2000).

<sup>47</sup> *Suter*, 67 Cal. Rptr. 2d at 434.

<sup>48</sup> *Id.* at 435-436.

<sup>49</sup> *Koscielski*, 435 F.3d at 902.

<sup>50</sup> See, e.g., *United States v. Lewitzke*, 176 F.3d 1022 (7th Cir. 1999) (rejecting equal protection challenge to federal law banning possession of firearm by person convicted of domestic violence misdemeanor); *United States v.*

Note that the decision in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), did not address an equal protection claim, but the Court's *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.<sup>51</sup> The Court did not set a standard for reviewing firearms laws. The Court also did not consider whether the Second Amendment right is a fundamental right for purposes of equal protection review. It is likely that future cases will resolve these issues.

### C. Due Process

The due process clause of the Fourteenth Amendment to the U.S. Constitution provides that no person shall be deprived of "life, liberty, or property, without due process of law...." Courts have held that the due process clause includes both substantive and procedural guarantees.

Substantively, a law failing to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or failing to provide explicit standards for those who apply the law, violates due process under the federal constitution. As the U.S. Supreme Court has explained, "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."<sup>52</sup> Note, however, that clearly written laws also can violate due process when they are overbroad, impinging on constitutionally-protected conduct.<sup>53</sup>

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the due process clause of the Fifth or Fourteenth Amendment.<sup>54</sup> Courts have held that the due process clause generally requires the government to provide the affected person with the opportunity to be heard at a meaningful time and in a meaningful manner, before the deprivation of the liberty or property interest.<sup>55</sup>

In *Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420, 433 (Cal. Ct. App. 1997), a firearms dealer challenged the City of Lafayette's requirements that firearms dealers obtain land use and police permits, and the city's zoning ordinance, which limited firearms dealers to areas zoned for retail or general commercial uses. The court held that these restrictions do not violate the substantive due process clause, noting that:

As the operation of a firearms dealership is a commercial enterprise, there is a rational basis for confining that operation to commercially zoned areas. In addition, because

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*McKenzie*, 99 F.3d 813 (7th Cir. 1996) (rejecting equal protection challenge to federal law banning possession of firearm by felon); *California Rifle and Pistol Ass'n. v. City of West Hollywood*, 78 Cal. Rptr. 2d 591, 605-606 (Cal. Ct. App. 1998) (rejecting equal protection challenge to ban on the sale of "junk guns"); *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) (rejecting equal protection challenge to the definition of "assault weapon" in the 1994 federal assault weapon ban, which expired in 2004). *But see Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998) (upholding equal protection challenge against federal law banning possession of firearms by government employees convicted of domestic violence misdemeanors but allowing possession by government employees convicted of domestic violence felonies).

<sup>51</sup> *Heller*, 128 S.Ct. at 2818 n.27.

<sup>52</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

<sup>53</sup> *Id.* at 114-15.

<sup>54</sup> *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

<sup>55</sup> *Id.*

dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas, schools, liquor stores and bars.<sup>56</sup>

The court also noted that substantive due process allows for imprecise zoning or licensing ordinances, because of the need for government “in large urban areas to delegate broad discretionary power to administrative bodies.”<sup>57</sup>

In *Baer v. Wauwatosa*, 716 F.2d 1117 (7th Cir. 1983), a licensed gun dealer brought an action against a city, mayor, and council members, alleging that by taking away his license to sell guns, the defendants had deprived him of property without due process of law. The city had revoked the license when the dealer was convicted of a felony. The court held that the dealer was deprived of “property” within the meaning of the due process clause when the city revoked his license, but that the procedures used for the revocation were adequate.<sup>58</sup> The court also held that the revocation of the license did not violate the substantive due process clause, stating:

The sale of guns is fraught with both short-term and long-term danger to the public -- or so at least the Wauwatosa authorities could rationally conclude, and no more is required to uphold the substantive validity of their action under the due process clause. The short-term danger is that the guns will be sold to criminals, children, and others who are, for excellent reasons, forbidden by law to have them; the long-term danger is that the circumstances of sale will encourage people to think of guns as weapons of aggression.<sup>59</sup>

Most courts have rejected due process challenges to firearms laws under the U.S. Constitution and analogous state constitutional provisions.<sup>60</sup>

Note that the decision in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), did not address a due process claim, but the Court’s *dicta* suggests that the rational basis test is not appropriate for reviewing firearms regulation under the Second Amendment.<sup>61</sup> The Court did not set a standard for reviewing firearms laws. It is likely that future cases will resolve these issues.

#### **D. Privilege Against Self-Incrimination**

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<sup>56</sup> *Suter*, 67 Cal. Rptr. 2d at 433.

<sup>57</sup> *Id.* at 431.

<sup>58</sup> *Baer*, 716 F.2d at 1122-1123.

<sup>59</sup> *Id.* at 1123.

<sup>60</sup> *See, e.g., United States v. Hutzell*, 217 F.3d 966 (8th Cir. 2000) (rejecting due process challenge to federal law prohibiting possession of firearms by persons convicted of misdemeanor crimes of domestic violence); *United States v. Lim*, 444 F.3d 910 (7th Cir. 2006) (rejecting due process challenge to federal law requiring registration of sawed-off shotguns); *United States v. Edwards*, 182 F.3d 333 (5th Cir. 1999) (rejecting due process challenge to federal law banning possession of firearm by an unlawful user of a controlled substance); *City of Cincinnati v. Langan*, 640 N.E.2d 200 (Ohio Ct. App. 1994) (rejecting due process challenge to local assault weapon ban). *But see Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994) (upholding a due process challenge to portions of the definition of “assault weapon” in local assault weapon ban); *United States v. Vest*, 448 F. Supp. 2d 1002 (S.D. Ill. 2006) (upholding as applied due process challenge to law enforcement exception to federal laws restricting transfer and possession of machine guns).

<sup>61</sup> *Heller*, 128 S.Ct. at 2818 n.27.

The Fifth Amendment to the U.S. Constitution provides in part that no person “shall be compelled in any criminal case to be a witness against himself.” Record-keeping requirements violate the “privilege against self-incrimination” when they are directed principally at persons “inherently suspect of criminal activities.”<sup>62</sup>

As discussed below, opponents of this model law may argue that the requirement that ammunition sellers maintain a record of each ammunition sale violates the privilege against self-incrimination because it requires purchasers, even those who are prohibited by law from possessing ammunition, to admit they purchased ammunition. However, the type of information recorded pursuant to this model law is neutral on its face, and this part of the model law is directed at ammunition purchasers generally, not a group inherently suspect of criminal activity. This requirement therefore does not violate the privilege against self-incrimination.

## **E. Preemption and Local Authority to Regulate Firearms**

Preemption occurs when a higher level of government removes regulatory power from a lower level of government. For example, Congress may remove legislative authority from the states in certain areas. Likewise, state governments may, in some cases, remove local legislative authority.

### **1. Federal Preemption**

Under the Supremacy Clause of Article VI of the U.S. Constitution, a federal law is binding on all state and local governments so long as Congress duly enacted the law pursuant to one of its limited powers. When federal law removes state authority (and thus local authority) to regulate a specific subject matter, the process is called “federal preemption.” Federal preemption of state law is uncommon in the area of firearms regulation.

Congress may make its intention to preempt an area of state law clear by expressly stating its intent in the language of a statute. Absent such a statement, when considering a challenge to a state or local law based on the claim that regulation of the subject has been preempted by Congress, courts presume that the federal government does not intend to preempt state and local authority.<sup>63</sup> When the challenged law is within an area of traditional state authority, the reviewing court will find preemption only when the court is “absolutely certain” that Congress intended to take away that authority.<sup>64</sup> Courts look for the existence of a pervasive scheme of federal legislation of the particular subject, or an irreconcilable conflict between the federal regulation and the challenged law, to determine congressional intent.<sup>65</sup>

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<sup>62</sup> *Haynes v. U.S.*, 390 U.S. 85 (1968), *Garner v. U.S.*, 424 U.S. 648 (1976); *California v. Byers*, 402 U.S. 424 (1971).

<sup>63</sup> *Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), *aff'd*, 97 F.3d 681 (2d Cir. 1996) (upholding New York City’s assault weapon ban against a federal preemption challenge).

<sup>64</sup> *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991) (rejecting a federal preemption challenge to a Missouri constitutional provision setting mandatory retirement age for state judges).

<sup>65</sup> *Richmond*, 896 F. Supp. at 285.

Congress has not expressly preempted the broad field of firearms regulation.<sup>66</sup> Furthermore, courts have held that congressional regulation of firearms does not create a scheme so pervasive that it leaves no room for state and local law.<sup>67</sup> Thus, absent a specific, irreconcilable conflict between a challenged state or local firearm law and a federal enactment, there is no federal preemption of that state or local law.

## 2. State Preemption

Most state constitutions allocate authority to local governments to regulate in the interests of the public health, safety and welfare (which generally includes regulation of firearms). “State preemption” occurs when a state government removes a portion of a local government's legislative authority. States differ considerably in how and to what extent they preempt the regulation of firearms.

Article XI, § 7 of the California Constitution provides that “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” A local government's police power under this provision includes the power to regulate firearms.<sup>68</sup> Ordinances enacted pursuant to the police power are valid unless they conflict with state law.<sup>69</sup> A conflict exists if the ordinance contradicts, duplicates, or enters an area occupied by general law, either expressly or by legislative implication.<sup>70</sup>

The California Legislature has expressly preempted the following areas of firearms law: 1) licensing or registration of commercially manufactured firearms; 2) licensing or permitting with respect to the purchase, ownership, possession or carrying of a concealable firearm in the home or place of business; and 3) regulation of the manufacture, sale or possession of “imitation firearms.”

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<sup>66</sup> Rather, courts have cited 18 U.S.C. § 927 for the proposition that Congress has expressed an intent *not* to preempt the field of firearms. See, e.g., *Oefinger v. Zimmerman*, 601 F.Supp. 405 (W.D. Pa. 1984) (rejecting a federal preemption challenge to a state law banning machine guns and sawed-off shotguns); *C.D.M. Products, Inc., v. City of New York*, 350 N.Y.S.2d 500 (N.Y. Sup. Ct. 1973) (rejecting a federal preemption challenge to a local ordinance requiring licensing of wholesale firearm manufacturers and assemblers). 18 U.S.C. § 927 provides that “No provision of this chapter [18 U.S.C. § 921 *et seq.* which contains provisions regulating the licensing of firearms manufacturers and dealers, firearms possession, the carrying of weapons, and armor piercing ammunition] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.” Note, however, that 18 U.S.C. § 926A provides that, notwithstanding state or local law, a person may transport firearms “from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm” so long as he or she complies with the specified safety standards. Courts have found this provision to supersede local laws regulating transportation of firearms. See, e.g., *Bieder v. United States*, 662 A.2d 185 (D.C. 1995) (reversing conviction for multiple violations of District firearms laws on grounds that trial court failed to allow defense based on 18 U.S.C. § 926A); *Arnold v. City of Cleveland*, 1991 Ohio App. LEXIS 5246 (Ohio Ct. App. 1991) (upholding federal preemption challenge to local law banning transportation of assault weapons). But see *Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, 746 F. Supp. 1415 (E.D. Cal. 1990) (rejecting federal preemption challenge to state law banning transportation of assault weapons).

<sup>67</sup> *Richmond*, 896 F. Supp. at 285.

<sup>68</sup> *Galvan v. Superior Court of San Francisco*, 452 P.2d 930 (Cal. 1969).

<sup>69</sup> *Sherwin-Williams Co. v. City of Los Angeles*, 844 P.2d 534, 536 (Cal. 1993).

<sup>70</sup> *Id.* at 536-7.

California Government Code § 53071 provides:

It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in section 1721 of the Labor Code.

California Penal Code § 12026(b) provides:

No permit or license to purchase, own, possess, keep, or carry...shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

California Government Code § 53071.5 provides:

By the enforcement of this section, the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in section 12550 of the Penal Code, and that section shall preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles described in subdivision (g) of Section 12001 of the Penal Code.<sup>71</sup>

Courts will not infer preemption unless the circumstances clearly indicate the Legislature intended to preempt the field.<sup>72</sup>

*Suter v. City of Lafayette*, 67 Cal. Rptr. 2d 420 (Cal. Ct. App. 1997) involved a preemption challenge to an ordinance regulating the location and operation of firearms dealers, and requiring firearms dealers to obtain local land use and police permits. The court of appeal dismissed the action, holding that local governments are not generally excluded by state law from imposing additional requirements on firearms dealers.<sup>73</sup> In fact, the court noted that California Penal Code § 12071 explicitly contemplates local regulation of firearms dealers, including local licensing requirements.

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<sup>71</sup> In addition, California generally permits local regulation of sport shooting ranges, but provides that local jurisdictions may not enforce new or amended noise control laws on shooting ranges that are in operation and not in violation of existing law at the time of the enactment of the new or amended noise control ordinance, if there has been no substantial change in the nature or use of the range. Cal. Civ. Code § 3482.1(d).

<sup>72</sup> *California Rifle and Pistol Ass'n, Inc. v. City of West Hollywood*, 78 Cal. Rptr. 2d 591, 600 (Cal. Ct. App. 1998) (holding that state law did not preempt a local ordinance banning the sale of Saturday Night Specials).

<sup>73</sup> *Suter*, 67 Cal. Rptr. 2d at 427.

The court in *Suter* found that the ordinance did not conflict with, duplicate, or enter into a field fully occupied by state law and was not, therefore, preempted, with one exception. The court struck down the portion of the ordinance regulating firearm storage, stating that it was preempted by the storage requirements in Penal Code § 12071(b)(14). However, subsequent to that case, the Legislature added Penal Code § 12071(b)(15), which states, “The licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those specified in paragraph (14).” Hence, California law does not preempt local governments from imposing requirements on firearms dealers, including licensing and security requirements, to supplement state law.<sup>74</sup>

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<sup>74</sup> Note that, in *Fiscal v. City and County of San Francisco*, 70 Cal. Rptr. 3d 324 (Cal. Ct. App. 2008), a court of appeal held that Proposition H, a municipal ordinance prohibiting all handgun possession and the sale, distribution, transfer and manufacture of all firearms and ammunition in San Francisco, was preempted by state law.

### III. Responses to Common Opposition Arguments

Opponents of this model law might argue that it creates undue burdens for firearms dealers and ammunition sellers, especially small businesses, by increasing the costs of doing business. However, the provisions of this model law impose modest costs to businesses. Furthermore, the benefits to public safety detailed in the findings of this model law clearly outweigh the costs imposed on the gun industry. In addition, the security measures required by the law prevent the theft of merchandise and protect the dealer's inventory. Responsible firearms dealers and ammunition sellers already use these measures and should welcome the elimination of competition from irresponsible dealers who present a danger to the public.

Several arguments are sometimes raised specifically in opposition to the record-keeping requirement for ammunition purchases. Some of the most common arguments are that:

- The record-keeping requirement for ammunition purchases will significantly delay transactions and drive customers outside the jurisdiction.
- Congress repealed a similar requirement in 1986, presumably because it was ineffective or costly to enforce.
- The requirement violates the purchaser's right to privacy and will lead to identity theft.
- The requirement is unconstitutional because it violates the privilege against self-incrimination.

The record-keeping requirement will not significantly delay transactions or drive customers outside the jurisdiction. The Sacramento Police Department has estimated that this requirement only adds two minutes to a transaction, significantly less time than if the customers got in their cars and traveled elsewhere to purchase ammunition. The inconvenience to law-abiding citizens is minor and is warranted by the lethal nature of the product being purchased.

It is true that the Firearm Owners' Protection Act of 1986 (FOPA) repealed several ammunition-related provisions of the Gun Control Act of 1968. However, the elimination of almost all federal regulation of ammunition sales and transfers constituted only a fraction of FOPA's sweeping changes to federal firearms regulations.<sup>75</sup> FOPA was sponsored by the gun lobby, and the NRA website currently states that its lobbying arm worked for more than a decade to secure FOPA's passage.<sup>76</sup> Although the NRA argued that the ammunition record-keeping provisions of federal law were ineffective, the experiences in Los Angeles and Sacramento (discussed above) show that a record-keeping requirement for ammunition sales can be quite effective. In addition, technological advances now allow records to be transmitted electronically, making enforcement less burdensome.

The record-keeping requirement does not violate the purchaser's right to privacy or lead to identity theft. Only the seller and law enforcement are granted access to the information that the

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<sup>75</sup> FOPA also limited the number of inspections of dealers' premises ATF could conduct without a search warrant; prevented a central federal database of firearms, firearms owners, or firearms transactions; legalized sales by dealers at gun shows within the same state; and loosened the requirement of a federal license for persons engaged in the business of firearms sales. Pub. L. No. 99-308.

<sup>76</sup> National Rifle Association, *About NRA-ILA, Who We Are, And What We Do*, at <http://www.nraila.org/About/>.

ammunition purchaser must provide. This information is identical to the information that a person purchasing a firearm must provide. There is no evidence that identity theft has ever occurred in connection with a firearm sale. Accordingly, there is no reason to believe that ammunition sellers or law enforcement officers will steal an ammunition purchaser's identity.

Moreover, the requirement that ammunition sellers maintain a record of each ammunition sale does not violate the privilege against self-incrimination. As noted above, record-keeping requirements violate the "privilege against self-incrimination" when they are directed principally at persons "inherently suspect of criminal activities."<sup>77</sup> However, the type of information recorded pursuant to this model law is neutral on its face, and this provision is directed at ammunition purchasers generally, not a group inherently suspect of criminal activity. This requirement therefore does not violate the privilege against self-incrimination.

Finally, opponents of the requirement that firearms dealers provide an inventory of their merchandise to local law enforcement every six months sometimes argue that this requirement constitutes "registration" of commercially manufactured firearms and is therefore preempted by California Government Code § 53071. However, "registration" refers to a system that records the *identity* of the purchasers or owners of firearms along with information about the firearms purchased or owned by those individuals. The inventory requirement described in this model law does not involve recording information about the purchasers or owners of firearms. As a result, it is not a registration requirement and is not preempted.

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<sup>77</sup> *Haynes v. U.S.*, 390 U.S. 85 (1968); *Garner v. U.S.*, 424 U.S. 648 (1976); *California v. Byers*, 402 U.S. 424 (1971).

## **Conclusion**

LCAV hopes that this report will be useful to local jurisdictions in California considering the adoption of ordinances to regulate firearms dealers and/or ammunition sellers. LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services, and contact us at 415-433-2062 if we can be of assistance.



Legal Community Against Violence

expertise, information & advocacy to end gun violence

*LCAV Model Law*  
**REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS  
(LOCAL GOVERNMENTS IN CALIFORNIA)**

**May 2009**

**About LCAV and Our Model Laws**

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

*This report and model law do not offer, and are not intended to constitute, legal advice.*

**Executive Summary**

**Policy Background**

Legal Community Against Violence (LCAV) has developed a model ordinance for use by California jurisdictions to require the reporting of lost or stolen firearms.

Federal and California laws currently require licensed firearms dealers, but not gun owners, to report the loss or theft of firearms.<sup>1</sup> Seven states (Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island), the District of Columbia, and several local jurisdictions, many in California, impose this requirement on gun owners as well. Local governments with reporting laws include San Francisco, Sacramento, Oakland, Berkeley, Los Angeles, West Hollywood, Thousand Oaks, Simi Valley and Port Hueneme in California, as well as Chicago, Illinois, Cleveland and Columbus, Ohio, Hartford, Connecticut, and New York, New York.

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<sup>1</sup> References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model law below.

Laws requiring the reporting of lost or stolen firearms are useful to law enforcement for several reasons. First, when a crime gun is traced by law enforcement to the last purchaser of record, the owner may claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking.<sup>2</sup> Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it. These laws allow law enforcement to charge an individual with a crime if he or she failed to file a timely report of a lost or stolen firearm, or, alternatively, if he or she filed a false report.

Second, reporting laws help disarm prohibited persons. When a person who legally owned a gun falls into a prohibited category, it is crucial that law enforcement remove the firearm from his or her possession. For example, a gun owner who is convicted of a felony or who becomes the subject of a domestic violence restraining order is not permitted under federal or state law to continue to possess his or her firearm.<sup>3</sup> However, when ordered to surrender the firearm by law enforcement or a judge, the owner may falsely claim it has been lost or stolen. Mandatory reporting laws provide a deterrent to this behavior.

Third, the reporting requirement makes it easier for law enforcement to locate a lost or stolen firearm and return it to its owner. Timely reporting of gun thefts or losses enables police to trace guns more effectively, and makes the successful prosecution of users of stolen guns more likely.

Finally, reporting laws make gun owners more accountable for their weapons. Such laws also protect gun owners from unwarranted criminal accusations when a gun that was lost or stolen is later recovered at a crime scene.

According to a December 2008 report by Mayors Against Illegal Guns (a coalition of over 300 mayors that targets illegal guns nationwide), lost or stolen firearm reporting laws “can help law enforcement more easily identify and prosecute gun traffickers.” The report presents data showing that states that require the reporting of lost or stolen firearms export crime guns at less than one-third the rate of states that do not have lost or stolen reporting laws. In a 2007 report, The International Association of Chiefs of Police states, “law enforcement’s early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.” The report recommends that state and local governments mandate reporting of lost or stolen firearms.

A 2008 survey of Americans’ attitudes toward gun violence prevention measures found almost unanimous support for laws requiring the reporting of lost or stolen firearms: 91 percent of all people surveyed, and 88 percent of polled gun owners favored reporting laws.

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<sup>2</sup> Gun trafficking occurs when a person buys a gun legally and subsequently transfers it to another illegally.

<sup>3</sup> Note that the California Department of Justice maintains a Prohibited Armed Persons File to identify prohibited persons who remain in possession of firearms. This database currently identifies roughly 13,000 armed and prohibited persons.

## **Opposition Arguments**

Opponents of such laws sometimes argue that these measures could unfairly punish otherwise law-abiding gun owners who fail to report a weapon lost or stolen. However, prosecutorial discretion allows law enforcement officials to focus only on persons suspected of falsely claiming the loss or theft of a firearm, rather than persons who innocently fail to comply with the reporting requirement.

Opponents also sometimes argue that these laws will impose an undue burden on gun owners. However, federal and state laws already require firearms dealers to report lost and stolen firearms. In addition, California requires motorists to report serious automobile accidents to the Department of Motor Vehicles. A reporting requirement for firearms is no more burdensome on gun owners than the accident reporting law is on motorists. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products.

Another opposition argument is that criminals could easily thwart the law by filing false reports of lost or stolen guns. As noted above, however, a gun owner who repeatedly files reports claiming his or her firearms have been lost or stolen puts law enforcement on notice of possible gun trafficking. In addition, the model law makes it a crime to file a false report that a firearm has been lost or stolen. This provides a deterrent to the filing of false reports, and provides prosecutors another basis upon which to charge a trafficker or someone whose gun turns up at a crime scene where his or her involvement may be suspected.<sup>4</sup>

## **This Model Law**

This model law requires a person to report the loss or theft of a firearm he or she owns or possesses within 48 hours of the time he or she knew or reasonably should have known of such loss or theft.<sup>5</sup> In addition, an objective standard is used regarding the onset of the reporting period. This means that reporting is required within 48 hours of the time a reasonable person knew or *reasonably should have known* that the firearm was lost or stolen. A subjective standard, based on when the owner actually became aware of the loss or theft, would allow dishonest gun owners to thwart the law simply by claiming that they never knew the firearm was lost or stolen.

The model also provides an optional provision that requires persons who have had a firearm lost or stolen within five years prior to the effective date of the law to report the loss or theft within sixty days of the ordinance's effective date. This provision is

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<sup>4</sup> Opponents of lost or stolen reporting requirements also sometimes argue that gun owners will be unaware of the new duties imposed upon them and will unwittingly fail to comply. However, a jurisdiction adopting such a measure can take steps, such as mailing letters to gun owners or requiring firearms dealers to post notices, to ensure that gun owners learn of the new requirement. And, as noted above, prosecutors have discretion. If the circumstances suggest that an otherwise law-abiding gun owner was truly unaware of the law, it is unlikely that he or she would be prosecuted.

<sup>5</sup> Forty-eight hours is the reporting time period required of dealers by both federal and state law.

designed to decrease the ability of a gun owner to falsely claim that his or her gun was lost or stolen before the reporting requirement went into effect.

This model law requires the reporting of lost or stolen firearms and is designed specifically for use by local governments in California. LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

## Text of Model Law

### CHAPTER 1 REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS

<b>Sec. 1</b>	<b>Findings</b>
<b>Sec. 2</b>	<b>Reporting of Loss or Theft of Firearm</b>
<b>Sec. 3</b>	<b>Exceptions</b>
<b>Sec. 4</b>	<b>Penalty</b>
<b>Sec. 5</b>	<b>Severability</b>

#### **Sec. 1 Findings**

[Findings regarding the need for and benefits of this law should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

*Whereas*, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;<sup>6</sup>

*Whereas*, federal and California law require licensed firearms dealers to report the loss or theft of firearms to law enforcement within 48 hours;<sup>7</sup>

*Whereas*, when a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it;

*Whereas*, when a person who legally owned a gun falls into a prohibited category, it is crucial that law enforcement remove the firearm from his or her possession. Reporting laws help disarm prohibited persons by deterring them from falsely claiming that their firearms were lost or stolen;

*Whereas*, existing reporting laws, like California's requirements that firearms dealers report the loss or theft of firearms and that motorists report serious automobile accidents to the Department of Motor Vehicles, demonstrate that reporting laws are not unduly burdensome. Moreover, the highly lethal nature of firearms justifies an increased level of responsibility over that required for ownership of other, less dangerous products;

*Whereas*, reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene, and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner;

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<sup>6</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

<sup>7</sup> 18 U.S.C. § 923 (g)(6); Cal. Penal Code §§ 12071(b)(13), 12086(c)(3).

*Whereas*, the extreme danger firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons;

*Whereas*, neither federal nor California law contains any requirement that firearm owners report lost or stolen firearms;

*Whereas*, Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, and Rhode Island, and the District of Columbia, require the reporting of lost or stolen firearms;

*Whereas*, several local governments in California already require the reporting of lost or stolen firearms, including San Francisco, Sacramento, Oakland, Berkeley, Los Angeles, West Hollywood, Thousand Oaks, Simi Valley and Port Hueneme. Local ordinances often serve as catalysts for statewide policies;<sup>8</sup>

*Whereas*, several major cities outside of California, including Chicago, Illinois, Cleveland and Columbus, Ohio, Hartford, Connecticut, and New York, New York, also require reporting of lost or stolen firearms;

*Whereas*, a December 2008 report by Mayors Against Illegal Guns (a coalition of over 300 mayors that targets illegal guns nationwide) states that lost or stolen firearm reporting laws “can help law enforcement more easily identify and prosecute gun traffickers.” The report presents data showing that states that require the reporting of lost or stolen firearms export crime guns to other states at less than one-third the rate of states that do not have lost or stolen reporting laws;<sup>9</sup>

*Whereas*, in a 2007 report, The International Association of Chiefs of Police states, “law enforcement’s early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.” The report recommends that state and local governments mandate reporting of lost or stolen firearms;<sup>10</sup>

*Whereas*, a 2008 survey of Americans’ attitudes toward gun violence prevention measures found almost unanimous support for requiring the reporting of lost or stolen

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<sup>8</sup> For example, state laws regulating junk guns and requiring trigger locks were enacted only after numerous local communities in California adopted these measures. For citations to these and other local laws, *see*, Legal Community Against Violence, *Communities on the Move: How California Communities are Addressing the Epidemic of Handgun Violence* (2000), at [http://www.lcav.org/library/surveys\\_local\\_ordrs/com2000\\_pdf.pdf](http://www.lcav.org/library/surveys_local_ordrs/com2000_pdf.pdf).

<sup>9</sup> Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking*, (December 2008), at [http://www.mayorsagainstillegalguns.org/downloads/pdf/trace\\_report\\_final.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf). States “export” a crime gun when the last purchase of record occurred in the state and the gun is later recovered at a crime scene in a different state.

<sup>10</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 16, 22 (Sept. 2007).

firearms: 91 percent of all people surveyed, and 88 percent of polled gun owners favored reporting laws;<sup>11</sup>

Therefore, the [jurisdiction/governing body] hereby adopts the following:

## **Sec. 2 Reporting of Loss or Theft of Firearm**

It is unlawful for any person to fail to report to the Police/Sheriff's Department the theft or loss of a firearm he or she owns or possesses within forty eight (48) hours of the time he or she knew or reasonably should have known that the firearm has been stolen or lost, if the person resides in City/County or the loss or theft occurs in City/County.\*

*[Optional provision:*

**It is unlawful for any person to fail to report to the Police/Sheriff's Department within sixty days (60) of the effective date of this ordinance the theft or loss of a firearm he or she owned or possessed within the five years prior to the effective date of this ordinance if the person resided in City/County at the time of the loss or theft, or the loss or theft occurred in City/County, unless the firearm has been recovered.]<sup>12</sup>**

Pursuant to Penal Code § 11108, the Chief of Police/Sheriff shall submit a description of each firearm which has been reported lost or stolen directly into the California Department of Justice automated property system for firearms.

## **Sec. 3 Exceptions**

Section 2 shall not apply to the following persons:

- a) Law enforcement officials while engaged in their official duties;
- b) Members of the Armed Forces of the United States or the National Guard while engaged in their official duties;
- c) Firearms dealers and manufacturers licensed under federal and state law while engaged in the course and scope of their activities as licensees.

## **Sec. 4 Penalty**

- a) Any person violating section 2 is guilty of a misdemeanor;

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\* Where the words "Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>11</sup> Greenberg Quinlan Rosner Research and The Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* (April 10, 2008), available at [http://www.mayorsagainstillegalguns.org/downloads/pdf/polling\\_memo.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf)

<sup>12</sup> This provision is designed to decrease the ability of a gun owner to falsely claim that his or her gun was lost or stolen before the reporting requirement went into effect.

b) Any person who reports to any law enforcement officer, pursuant to section 2 of this ordinance, that a firearm has been lost or stolen, knowing the report to be false, is guilty of a misdemeanor.

**Sec. 5            Severability**

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity or the enforceability of the remaining portions of this chapter or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.



Legal Community Against Violence

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*LCAV Model Law*  
**PROHIBITING THE POSSESSION OF LARGE CAPACITY AMMUNITION MAGAZINES  
(LOCAL GOVERNMENTS IN CALIFORNIA)**

May 2009

**About LCAV and Our Model Laws**

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

*This report and model law do not offer, and are not intended to constitute, legal advice.*

**Executive Summary**

Legal Community Against Violence (LCAV) has developed a model ordinance for use by California jurisdictions seeking to prohibit the possession of large capacity ammunition magazines.

The ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine."<sup>1</sup> Inside the magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the firearm's action. Although the statutory definitions vary, magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines. In some cases, large capacity magazines can hold up to 100 rounds of ammunition. Other types of firearms, in contrast, are generally capable of holding far less ammunition. For example, revolvers typically hold six rounds of ammunition in a rotating cylinder. Although detachable large capacity magazines are typically associated with machine guns or semi-automatic assault

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<sup>1</sup> References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model law below.

weapons, such devices are available for any semiautomatic firearm that accepts a detachable magazine, including semi-automatic handguns.

Because of their ability to hold so many rounds of ammunition, large capacity magazines significantly increase the lethality of the automatic and semi-automatic firearms using them. Large capacity magazine bans, therefore, reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity ammunition magazine. In 1994, in recognition of the dangers posed by these devices, Congress adopted a law prohibiting the transfer and possession of large capacity magazines as part of the federal assault weapon ban. That law was filled with loopholes, however. In addition, the federal law was enacted with a sunset clause, providing for its expiration after ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to expire on September 13, 2004.

Since January 1, 2000, California law has, with limited exceptions, prohibited any person from manufacturing, importing into the state, keeping for sale, offering or exposing for sale, giving, or lending any large capacity magazine. California does not ban the *possession* of large capacity magazines, however.

The States of Hawaii, Massachusetts, New York, and New Jersey, and the City of Richmond, California are among the jurisdictions that currently prohibit the possession of large capacity magazines.

This model law prohibits the possession of large capacity ammunition magazines and is designed specifically for use by local governments in California. LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

## Text of Model Law

### CHAPTER 1 BANNING THE POSSESSION OF LARGE CAPACITY MAGAZINES

Sec. 1	Findings
Sec. 2	Definition
Sec. 3	Prohibition on possession of large capacity magazines
Sec. 4	Exemptions
Sec. 5	Penalty
Sec. 6	Severability

#### Sec. 1 Findings

[Findings regarding the need for and benefits of this law should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

*Whereas*, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;<sup>2</sup>

*Whereas*, the ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine." Inside the magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the firearm's action,

*Whereas*, magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines, although the statutory definitions vary. In some cases, large capacity magazines can hold up to 100 rounds of ammunition. Other types of firearms, in contrast, are generally capable of holding far less ammunition; for example, revolvers typically hold six rounds of ammunition in a rotating cylinder,

*Whereas*, although detachable large capacity magazines are typically associated with machine guns or semi-automatic assault weapons, such devices are available for any semiautomatic firearm that accepts a detachable magazine, including semi-automatic handguns,

*Whereas*, the ability of large capacity magazines to hold numerous rounds of ammunition significantly increases the lethality of the automatic and semi-automatic firearms using them,

*Whereas*, large capacity magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity magazine,

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<sup>2</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

*Whereas*, in 1994, in recognition of the dangers posed by these devices, Congress adopted a law prohibiting the transfer and possession of large capacity magazines as part of the federal assault weapon ban. That law was filled with loopholes, however,<sup>3</sup>

*Whereas*, the federal law was enacted with a sunset clause, providing for its expiration after ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to expire on September 13, 2004,<sup>4</sup>

*Whereas*, a researcher hired by the U.S. Department of Justice to analyze the effect of the 1994 federal ban on assault weapons (AWs) and large capacity magazines (LCMs) found that, “attacks with semiautomatics including AWs and other semiautomatics equipped with LCMs result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms,”<sup>5</sup>

*Whereas*, since January 1, 2000, California Penal Code § 12020(a)(2), (b) has, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving, or lending of large capacity magazines. California law does not, however, prohibit the possession of these magazines,<sup>6</sup> and this gap in the law threatens public safety,

*Whereas*, the States of Hawaii, Massachusetts, New York, and New Jersey, and the City of Richmond, California are among the jurisdictions that currently prohibit the possession of large capacity magazines,

*Therefore*, the [jurisdiction/governing body] hereby adopts the following:

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<sup>3</sup> Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, codified at: 18 U.S.C. §§ 921(a)(31), 922(w)(1), (2). Because the federal law only applied to large capacity ammunition magazines manufactured after the law’s effective date, possession and transfer of magazines manufactured prior to that date were still legal. Manufacturers took advantage of this loophole by boosting production of these devices in the months leading up to the ban, creating a legal stockpile of these weapons. This loophole also made enforcement difficult, as most magazines do not have any identifying marks to distinguish those that were manufactured before or after the effective date of the ban. Importation of Ammunition Feeding Devices with a Capacity of More Than 10 Rounds, 61 Fed. Reg. 39, 320 (July 29, 1996) (amending 27 C.F.R. § 178.119). As a result, these devices continued to be readily available nationwide, except where specifically banned by state or local law.

<sup>4</sup> For more information about the federal law, please see Legal Community Against Violence, *Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws* 28-29 (February 2008), available at: [http://www.lcav.org/library/reports\\_analyses/RegGuns.Classes.of.Weapons.pdf](http://www.lcav.org/library/reports_analyses/RegGuns.Classes.of.Weapons.pdf).

<sup>5</sup> Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Report to the National Institute of Justice, United States Department of Justice 3 (June 2004).

<sup>6</sup> Penal Code § 12020(a)(2), (b). A “large capacity magazine” is defined as any ammunition feeding device with the capacity to accept more than ten rounds, but does not include any .22 caliber tube ammunition feeding device, any feeding device that has been permanently altered so that it cannot accommodate more than ten rounds, or any tubular magazine that is contained in a lever-action firearm. Penal Code § 12020(c)(25). California law contains certain exceptions. See Cal. Penal Code § 12020; Cal. Code Regs. tit. 11, §§ 5480 – 5484.

## **Sec. 2            Definition**

“Large capacity magazine” means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;
- b) A .22 caliber tube ammunition feeding device; or
- c) A tubular magazine that is contained in a lever-action firearm.<sup>7</sup>

## **Sec. 3            Prohibition on possession of large capacity magazines**

- (a) No person, corporation, or other entity in the City/County\* may possess a large capacity magazine.
- (b) Any person who, prior to the effective date of this chapter, was legally in possession of a large capacity magazine shall have 90 days from such effective date to do either of the following without being subject to prosecution:
  - (1) Remove the large capacity magazine from the City/County; or
  - (2) Surrender the large capacity magazine to the Police/Sheriff's Department for destruction.

## **Sec. 4            Exceptions**

Section 3 shall not apply to the following:

- (a) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large capacity magazine, and does so while acting within the scope of his or her duties;
- (b) A person licensed pursuant to Penal Code § 12071;
- (c) A gunsmith for the purposes of maintenance, repair or modification of the large capacity magazine;

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<sup>7</sup> This definition is identical to the definition in the state law. Penal Code § 12020(c)(25). The expired federal law defined “large capacity ammunition feeding device” as “(1) a magazine, belt, drum, feed strip, or similar device manufactured after the date of the enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of ammunition; but (2) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.” Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, codified at: 18 U.S.C. §§ 921(a)(31), 922(w)(1), (2).

\* Where the words “Chief of Police/Sheriff,” “City/County” or similar variations appear, simply select the appropriate designation for your jurisdiction.

- (d) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;
- (e) Any person, corporation or other entity that manufactures the large capacity magazine for a person mentioned in subsection (a) or for export pursuant to applicable federal regulations;
- (f) Any person using the large capacity magazine solely as a prop for a motion picture, television, or video production;
- (g) Any holder of a special weapons permit issued pursuant to Penal Code § 12095, 12230, 12250, 12286, 12305, for any of the following purposes:
  - (1) For use solely as a prop for a motion picture, television, or video production;
  - (2) For export pursuant to federal regulations; or
  - (3) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations;
- (h) Any person issued a permit pursuant to Penal Code § 12079 by the California Department of Justice upon a showing of good cause for the possession, transportation, or sale of large capacity magazines between a person licensed pursuant to Penal Code § 12071 and an out-of-state client, when those activities are in accordance with the terms and conditions of that permit;<sup>8</sup>
- (i) Any federal, state or local historical society, museum, or institutional collection which is open to the public, provided that the large capacity magazine is properly housed, secured from unauthorized handling, and unloaded;
- (j) Any person who finds the large capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law; or
- (k) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.<sup>9</sup>

## **Sec. 5           Penalty**

Any person violating this chapter is guilty of a misdemeanor.

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<sup>8</sup> Penal Code § 12079 allows the Department of Justice (DOJ) to issue a permit for the possession, transportation, or sale between a state-licensed firearm dealer and an out-of-state client, upon a showing of good cause. This model law exempts persons granted this permit from its provisions, in deference to the DOJ's determination of good cause.

<sup>9</sup> This list of exceptions is based on state law. *See* Cal. Penal Code § 12020; Cal. Code Regs. tit. 11, §§ 5480 – 5484.

**Sec. 6            Severability**

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity or the enforceability of the remaining portions of this chapter or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.





Legal Community Against Violence

expertise, information & advocacy to end gun violence

***LCAV Model Resolution***  
**URGING LAW ENFORCEMENT TO SEND LETTERS TO PROSPECTIVE HANDGUN  
PURCHASERS  
(LOCAL GOVERNMENTS IN CALIFORNIA)**

**May 2009**

**About LCAV and Our Model Laws**

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

*This report and model resolution do not offer, and are not intended to constitute, legal advice.*

**Executive Summary**

Legal Community Against Violence (LCAV) has developed a model resolution for use by California jurisdictions urging law enforcement to send letters to prospective handgun purchasers who reside in the jurisdiction to inform them of their responsibilities as firearm owners.

California law requires all purchasers of firearms to complete a "Dealer Record of Sale" (DROS) form at a licensed firearms dealership.<sup>1</sup> The information provided on the form is then used to complete a background check on the purchaser. California law allows the Department of Justice (DOJ) to maintain information obtained regarding handgun purchasers from DROS forms in a central registry. California law also prohibits a licensed firearms dealer from transferring a firearm within ten days of the application to purchase.

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<sup>1</sup> References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model resolution below.

In July 2005, the Los Angeles City Attorney's office, in cooperation with DOJ and the Los Angeles Police Department, began distributing letters during the ten-day waiting period to handgun purchasers in certain areas of the City. DOJ forwards the name and address of these individuals to the City Attorney every morning. The City Attorney then sends the letters to the purchasers. The letter, signed by the Attorney General, the City Attorney, and the Chief of Police, reminds the handgun purchaser, in English and Spanish, that if he or she decides to give or sell the handgun to someone else, he or she must complete a DROS form, which can be completed at any gun store. The letter also mentions that if the gun is recovered in connection with a crime, the Los Angeles City Attorney will prosecute the gun's previous owner if the owner did not complete the DROS form.

Since distribution of these letters began, the number of handgun purchasers who have failed to pick up their handguns at gun stores after the waiting period has expired has increased significantly. A statistical analysis is underway to determine exactly how the letters have affected the likelihood that a handgun purchaser will abandon the firearm at the gun store. However, preliminary findings have shown that the letters have made handgun purchasers twice as likely to leave their handguns at the gun store after the waiting period has expired, possibly because those purchasers were intending to transfer their handguns to persons prohibited from possessing them.

DOJ has not yet extended the program outside of Los Angeles. However, Penal Code § 11106 requires DOJ to provide peace officers with information about handgun purchasers "upon proper application" for any purpose. A city police or county sheriff's department may, therefore, routinely seek this information from DOJ and send letters to the handgun purchasers who reside in that jurisdiction during the waiting period.

Besides information about the state requirement that all transfers of firearms be processed through a licensed dealer, the jurisdiction may include other information in its letter to handgun purchasers. The jurisdiction could inform new handgun purchasers that the state imposes criminal liability on adults who leave firearms accessible to children under the age of 18, when the adult knows or reasonably should know that the child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, under certain circumstances.

The jurisdiction could also include information about the proper storage of firearms in the home. In 2005, 1,060 Californians under the age of 25 died from a gunshot wound. The presence of unlocked guns in the home increases the risk not only of accidental gun injuries but of intentional shootings as well. However, the practice of keeping firearms locked and unloaded, and of storing ammunition in a locked location separate from firearms, significantly decreases the risk of suicide and unintentional injury in homes with children and teenagers. As a result, the jurisdiction may wish to encourage new handgun owners to store their guns in this manner.

Letters to handgun purchasers also present an opportunity for jurisdictions to advise those purchasers about any firearms laws which are unique to their jurisdiction. For example, a number of jurisdictions in California, including Los Angeles, Oakland, Sacramento and San Francisco, require firearm owners to report to law enforcement the loss or theft of any firearm within a certain amount of time after they discovered or should have discovered the loss or theft.

If the jurisdiction has this requirement, it should describe it in the letters sent to handgun purchasers during the waiting period.

LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to pass this resolution or enact other measures to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

**Text of Model Resolution**

\_\_\_\_\_ City Council/County Board of Supervisors\*

Resolution No. \_\_\_\_\_

**RESOLUTION URGING THE CHIEF OF POLICE/SHERIFF TO SEND LETTERS TO PROSPECTIVE HANDGUN PURCHASERS WHO RESIDE IN THE JURISDICTION INFORMING THEM OF THEIR RESPONSIBILITIES AS FIREARM OWNERS**

[Findings regarding the need for and benefits of this resolution should be included. Findings in support of a resolution are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

*Whereas*, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;<sup>2</sup>

*Whereas*, California Penal Code § 11106 requires the Department of Justice to compile information about prospective handgun purchasers based on information received from firearms dealers at the time of application, and to furnish this information to peace officers of the state upon any proper request,

*Whereas*, Penal Code § 12071(b)(3)(A) prohibits delivery of a firearm until ten days have passed since the purchaser has submitted an application to purchase the firearm,

*Whereas*, California law imposes certain responsibilities on firearm owners, including the responsibility to process all secondary transfers of firearms through a licensed firearms dealer, thereby allowing the Department of Justice to run a background check on every recipient of a firearm,<sup>3</sup>

*Whereas*, Penal Code §§ 12035 and 12036 impose criminal liability on adults who leave firearms accessible to children under the age of 18, when the adult knows or reasonably should know that the child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, under certain circumstances,

*Whereas*, the U.S. Centers for Disease Control and Prevention reports that 1,060 Californians under the age of 25 died from a gunshot wound in 2005,<sup>4</sup> and studies have found that: 1) the

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\* Where the words "Chief of Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>2</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

<sup>3</sup> Penal Code §§ 12072(d), 12076.

<sup>4</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Web-Based Injury Statistics Query & Reporting System (WISQARS), WISQARS Injury Mortality Reports, 1999-2005* (2008), at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html).

presence of unlocked guns in the home increases the risk of both accidental and intentional shootings;<sup>5</sup> and 2) the practice of keeping firearms locked and unloaded, and of storing ammunition in a locked location separate from firearms significantly decreases the risk of suicide and unintentional injury in homes with children and teenagers,<sup>6</sup>

*[If the City/County has an ordinance requiring the reporting of lost or stolen firearms, the following or similar language may be included:*

*Whereas, firearm owners in the City/County are obligated to report all lost or stolen firearms to the Chief of Police/Sheriff within \_\_\_ hours of the time they discovered or should have discovered the loss or theft,]*

*[If the City/County does not have an ordinance requiring the reporting of lost or stolen firearms, the following or similar language may be included:*

*Whereas, information about lost or stolen firearms provides law enforcement with the opportunity to investigate and prevent potential gun trafficking and the use of guns in crime,]*

*Whereas, in July 2005, the Los Angeles Police Department began receiving the names and addresses of prospective handgun purchasers residing in targeted areas of the City from the Department of Justice, and began distributing letters during the ten-day waiting period to those purchasers informing them of their responsibilities as firearm owners,<sup>7</sup>*

*Whereas, the letter sent out to prospective handgun purchasers by the Los Angeles Police Department states that it is a crime to sell or give a gun to anyone without first completing a Dealer Record of Sale (DROS) form at a gun store, and if the police recover a gun involved in a crime, the City Attorney will prosecute the previous owner if he or she did not fill out a DROS form,*

*Whereas, preliminary findings regarding the Los Angeles program indicate that local handgun purchasers who receive the letters are twice as likely as local handgun purchasers who do not receive the letters to leave their handguns at the dealership after the waiting period expires, suggesting that these purchasers may have been intending to illegally transfer these handguns to persons prohibited from possessing them,<sup>8</sup>*

NOW, THEREFORE, BE IT RESOLVED: That the City Council/County Board of Supervisors by adoption of this resolution hereby urges the Chief of Police/Sheriff to request that the Department of Justice provide, on a daily basis, the names and addresses of prospective handgun purchasers who reside in the City/County to the Chief of Police/Sheriff,

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<sup>5</sup> David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-inflicted & Unintentional Firearm Injuries Among Children & Adolescents: The Source of the Firearm*, 153 Archives Pediatric & Adolescent Med. 875 (Aug. 1999), at <http://archpedi.ama-assn.org/cgi/content/short/153/8/875>.

<sup>6</sup> David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (Feb. 2005).

<sup>7</sup> Mayor Antonio R. Vallaraigosa, *City of Los Angeles*, 2008 Gang and Gun Violence Enforcement Initiative, May 29, 2008.

<sup>8</sup> For more information about the program in Los Angeles, please contact Peter Shutan, Assistant Supervising Attorney, Gang Division, Office of the Los Angeles City Attorney, (213) 978-4659.

FURTHER RESOLVED: That the Chief of Police/Sheriff is encouraged to send letters to prospective handgun purchasers residing in the City/County at the start of the ten-day waiting period advising them of their obligations as firearm owners, and

FURTHER RESOLVED: That the letters sent by the Chief of Police/Sheriff should inform the purchaser that:

- (1) It is a crime to sell or give a gun to someone else without first completing a Dealer Record of Sale (DROS) form at a gun store, and if the police recover a gun involved in a crime, the City Attorney may prosecute the previous owner if he or she did not fill out a DROS form;
- (2) Penal Code §§ 12035 and 12036 impose criminal liability on adults who leave firearms accessible to children under the age of 18, when the adult knows or reasonably should know that the child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, under certain circumstances;
- (3) In order to decrease the risk of unintentional injury and suicide, the purchaser should store every firearm unloaded using a trigger lock or inside a gun safe, and store ammunition separately from firearms; and

*[If the City/County **has** an ordinance requiring the reporting of lost or stolen firearms, the jurisdiction may wish to include the following language:]*

- (4) The purchaser is legally required to report all lost or stolen firearms to law enforcement in accordance with [the local ordinance].

*[If the City/County **does not have** an ordinance requiring the reporting of lost or stolen firearms, but the jurisdiction nevertheless wishes to encourage such reporting, the following language may be included:]*

- (4) The purchaser should report all lost or stolen firearms to law enforcement.



Legal Community Against Violence

expertise, information & advocacy to end gun violence

***LCAV Model Resolution***  
**URGING LAW ENFORCEMENT TO OBTAIN AND UTILIZE DEPARTMENT OF  
JUSTICE INFORMATION REGARDING PROHIBITED ARMED PERSONS  
(LOCAL GOVERNMENTS IN CALIFORNIA)**

**May 2009**

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LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, [www.lcav.org](http://www.lcav.org), is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

*This report and model resolution do not offer, and are not intended to constitute, legal advice.*

**Executive Summary**

Legal Community Against Violence (LCAV) has developed a model resolution for use by California jurisdictions urging law enforcement to receive information from the California Department of Justice (DOJ) regarding persons who legally purchased firearms in the jurisdiction, but who subsequently became prohibited from possessing them. In addition, the resolution urges law enforcement agencies who have received this information to seek training from DOJ regarding its use, and to retrieve illegally possessed firearms whenever possible.

Federal and state laws prohibit firearm possession by certain persons, such as felons, domestic violence misdemeanants, and persons involuntarily committed to mental institutions. California Penal Code § 12010 requires DOJ to maintain an online database identifying individuals who legally purchased firearms, but who subsequently fell into a prohibited category and did not relinquish their firearms as required by law.<sup>1</sup> This file is known as the Prohibited Armed

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<sup>1</sup> References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model resolution below.

Persons File (“the File”). In January 2009, DOJ estimated that the File currently contains approximately 13,000 cases, but could eventually expand to include the names of as many as 60,000 individuals as additional records are added to the system.

Penal Code § 12010 requires DOJ to make information about persons included in the File available to law enforcement officials upon request for the purpose of determining who is armed but prohibited from possessing firearms. In June 2007, DOJ implemented this requirement by allowing law enforcement agencies to sign up for secure mailboxes to receive monthly updated information from the File regarding armed persons in their jurisdiction who are prohibited by law from possessing firearms.

In addition, Penal Code § 12012 states that DOJ is required to assist local law enforcement agencies in investigations of persons who are armed and prohibited from possessing a firearm. DOJ provides training upon request to local law enforcement officers regarding how to use information in the File. As of December 2007, DOJ special agents had trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff departments on how to use the File during firearm-related investigations.<sup>2</sup>

DOJ does not have the resources to investigate and disarm every person identified in the File, making additional action by local law enforcement agencies necessary to disarm persons identified in the File. This model resolution urges law enforcement to request monthly updates from DOJ regarding persons in the jurisdiction named in the File, to seek training from DOJ regarding use of information in the File, and to retrieve illegally possessed firearms whenever possible.

LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to pass this resolution or enact other measures to reduce gun violence. Please see [www.lcav.org](http://www.lcav.org) for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

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<sup>2</sup> More information about the file can be obtained from the Unit that handles the File within the Bureau of Firearms in the Department of Justice at: 916-227-3944.

**Text of Model Resolution**

\_\_\_\_\_ City Council/County Board of Supervisors\*

Resolution No. \_\_\_\_\_

RESOLUTION URGING THE CHIEF OF POLICE/SHERIFF TO REQUEST MONTHLY UPDATES FROM THE DEPARTMENT OF JUSTICE (DOJ) REGARDING PROHIBITED ARMED PERSONS IN THE JURISDICTION, TO SEEK TRAINING FROM DOJ REGARDING USE OF THIS INFORMATION, AND TO RETRIEVE ILLEGALLY POSSESSED FIREARMS WHENEVER POSSIBLE

[Findings regarding the need for and benefits of this resolution should be included. Findings in support of a resolution are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

*Whereas*, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 others were hospitalized for non-fatal gunshot wounds;<sup>3</sup>

*Whereas*, federal and state laws prohibit firearm possession by certain persons, such as felons, domestic violence misdemeanants, and persons involuntarily committed to a mental institution,

*Whereas*, California Penal Code § 12010 requires the Department of Justice (DOJ) to maintain a database, known as the Prohibited Armed Persons File (“the File”), identifying individuals who legally purchased firearms, but who subsequently fell into a prohibited category and did not relinquish their firearms as required by law,

*Whereas*, Penal Code § 12010 requires DOJ to make the information in the File available to all California law enforcement agencies through the California Law Enforcement Telecommunications System (CLETS), and Penal Code § 12012 requires DOJ to provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm,

*Whereas*, between July 2002 and September 2004, DOJ made more than 250 arrests, and seized more than 3,600 firearms, including 1,020 illegal assault weapons, based on information contained within the File,<sup>4</sup>

*Whereas*, in June 2007, DOJ began providing law enforcement agencies with secure mailboxes, upon request, to receive monthly updated information from the File listing all armed persons in

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\* Where the words “Chief of Police/Sheriff,” “City/County” or similar variations appear, simply select the appropriate designation for your jurisdiction.

<sup>3</sup> California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

<sup>4</sup> California Department of Justice, Office of the Attorney General, *Attorney General Lockyer Announces Governor Signature on Important Gun Safety Legislation*, News Release, Sept. 20, 2004.

their jurisdictions who are prohibited by law from possessing firearms. Between June and August 2007 alone, over 100 law enforcement agencies signed up with DOJ for these secure mailboxes,<sup>5</sup>

*Whereas*, in January 2009, DOJ estimated that the File contains approximately 13,000 cases, but could eventually expand to include the names of as many as 60,000 individuals as additional offender records are added to the system,<sup>6</sup>

*Whereas*, DOJ does not have the resources to investigate and disarm every person identified in the File, making additional action by local law enforcement agencies necessary to further disarm persons identified in the File,

*Whereas*, DOJ provides training upon request to local law enforcement officers regarding the use of information from the File during firearm-related investigations. As of December 2007, DOJ special agents had trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff departments on how to use the File during firearms investigations,<sup>7</sup>

*Whereas*, law enforcement agencies in jurisdictions that have signed up with the DOJ to receive monthly updated information from the File have not necessarily received training from the DOJ regarding use of this information or taken steps to retrieve illegally possessed firearms from persons identified in the File,

NOW, THEREFORE, BE IT RESOLVED: That the City Council/County Board of Supervisors by adoption of this resolution hereby urges the Chief of Police/Sheriff to sign up with DOJ to receive monthly updated information from the File listing all armed persons in the City/County who are prohibited by law from possessing firearms, if he/she has not done so already,

FURTHER RESOLVED: That the Chief of Police/Sheriff is encouraged to seek training from DOJ regarding the use of information from the File during firearms investigations,

FURTHER RESOLVED: That the Chief of Police/Sheriff is encouraged to investigate each person who is identified in the information from the File received from DOJ, and to retrieve illegally held firearms whenever possible.

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<sup>5</sup> Letter from Rick Oules, Director, California Department of Justice, Division of Law Enforcement, Bureau of Firearms, to Local Law Enforcement Officials re: Statewide Enforcement by DOJ Against Armed and Prohibited Persons, dated August 15, 2007.

<sup>6</sup> Telephone conversation with DOJ employees, January 22, 2009. In addition, on December 10, 2007, the Department of Justice issued a press release stating that the File had 9,000 cases as of that date, and could eventually expand to include 60,000 individuals as new offender records are added to the system. California Department of Justice, Office of the Attorney General, *Brown Cracks Down on Illegal Gun Possession, News Release*, Dec. 10, 2007, at:

<http://ag.ca.gov/newsalerts/release.php?id=1505&year=2007&month=12>.

<sup>7</sup> *Id.*

## ABAG FINANCE AND PERSONNEL COMMITTEE

Thursday, July 16, 2009, 5:00 p.m.  
ABAG Conference Room B  
MetroCenter—8<sup>th</sup> and Oak Streets  
Oakland, CA

<u>Est. Time in Minutes</u>		<u>Recommendation**</u>
2	1. <b>Public Comments</b>	Information
2	*2. <b>Minutes of the May 21, 2009 Meeting</b>	Action
5	*3. <b>Financial Report – ABAG</b> <i>The May 2009 report is enclosed with the agenda packet.</i>	Information
5	4. <b>Proposed Labor Agreement with SEIU Local 1021</b> <i>A tentative labor agreement has been reached between ABAG and SEIU Local 1021 through December 31, 2010. An oral presentation will be provided.</i>	Action
	5. <b>Adjournment</b>	Action

\* Attachments enclosed with packet.

\*\* The committee may take action on any item on the agenda, which action may be the recommended action, any other action or no action.

# ABAG FINANCE AND PERSONNEL COMMITTEE

## Summary Minutes

May 21, 2009

### Members Present

Supervisor Scott Haggerty, Chair  
Supervisor Rose Jacobs Gibson  
Supervisor John Gioia  
Mayor Mark Green  
Supervisor Mike Kerns  
Supervisor Barbara Kondylis  
Vice Mayor Peter McHugh  
Mayor A. Sepi Richardson

### Jurisdiction

County of Alameda  
County of San Mateo  
County of Contra Costa  
City of Union City  
County of Sonoma  
County of Solano  
City of Milpitas  
City of Brisbane

### Members Absent

Supervisor David Cortese County of Santa Clara

### Officers and Staff Present

Ezra Rapport, Deputy Executive Director  
Patricia Jones, Assistant Executive Director  
Kenneth Moy, Legal Counsel  
Herbert Pike, Finance Director  
Susan Hsieh, Assistant Finance Director

The meeting was called to order at 5:00 p.m.

- 1) There were no public comments.
- 2) Minutes of the March 19, 2009 meeting were approved as presented.  
/M/Jacobs-Gibson/S/Kondylis/C/approved.
- 3) Pike summarized the March and April 2009 financial reports for ABAG. Emphasis was on the slow recovery from the State creating high receivables and low cash balance. Committee members suggested an effort to expedite payment of dues to boost the cash balance.  
/M/Kondylis/S/Rose-Gibson/C/ to accept reports.
- 4) Pike presented recommendation to authorize continued annual contributions to the Tranter-Leong Internship Program of \$16,700 for the next three years.  
/M/McHugh/S/Green/C/ to refer to Executive Board with recommendation to approve.

**AGENDA ITEM 2**

- 5) Closed Session was held with Agency designated representatives Patricia Jones regarding negotiations with ABAG's employee union—SEIU 1021.  
Chair to report to the Executive Committee that the Committee was apprised of the on-going status of negotiations by the agency's representatives.
- 6) Closed Session was held with Legal Counsel Moy to conduct annual performance evaluation.  
Chair to report to Executive Board in Closed Session.
- 7) Meeting was adjourned at 6:00 p.m.

TO: Finance and Personnel Committee

DT: June 24, 2009

FM: Herbert Pike, Finance Director

Re: Financial Reports  
--May 2009

The following are highlights of the financial reports for May 2009.

Cash on Hand (Figure 1)

Cash on hand increased to \$878 thousand on May 31 from \$583 thousand on April 30. The May balance includes approximately \$372 thousand invested in the Local Agency Investment Fund (LAIF). Currently, ABAG does not hold any other investments. The May 31 cash balance is approximately \$1.09 million less than the prior year. This year-to-year balance is worse when noting the current cash balance includes over \$500 thousand designated to cover the Annual Required Contribution (ARC) to amortize the Agency's unfunded liability for Other Post Employment Benefits (retiree health care) over the next 30 years. This OPEB liability is projected to be about \$565 thousand by the end of the current fiscal year. Thus, the "uncommitted" cash balance is actually down almost \$1.6 million from last year after accounting for the new OPEB liability. The downturn is attributed to the higher receivables noted below.

Receivables (Figure 2)

Receivables from grant and service programs amounted to about \$4.00 million on May 31, a decrease of \$154 thousand from the month prior. Compared to May 31 the year prior, the total reflects an increase of approximately \$1.87 million. It is anticipated that the continued reduction in State staffing and requested furloughs may slow reimbursements in the succeeding months. Some projects to be supported by State bond sales, although restarted, are awaiting reimbursement when certain bonds are sold; we have not yet received word when bonds for ABAG's projects will be sold. Staff is seeking to accelerate collections from other Federal and local funding sources.

Actual vs. Budgeted Expenses (Figure 9)

Total expenses on May 31 amounted to about \$16.51 million, or 91.2%, of projected expenses of \$18.1 million for FY 08-09.

Actual vs. Budgeted Revenues (Figure 10)

At May 31, total revenues amounted to about \$16.35 million, or 90.3%, of projected revenue of \$18.1 million for FY 08-09.

As of May 31, both revenues and expenses are below projections for the first eleven months of FY 08-09. These positions are largely due to the timing of consultant and sub-contractor expenses that are grant funded. The difference between the approved budget of \$26.7 million and the projections above reflect the typical multi-year programs and their budget balances at fiscal year-end (June 30, 2009) that will be carried forward to the following year. However, several Estuary projects have been suspended due to budget issues at the State. There is a concern that they may not be continued.

Fund Equity (Figure 5)

As of May 31, general fund equity was approximately \$0.95 million, a decrease of \$26 thousand from April 30. The agency's restricted fund equity, consisting of building bond interest, capital, self-insurance and building maintenance, remained unchanged at \$510 thousand.

**AGENDA ITEM 3**

Indirect Cost (Figure 6)

The agency's actual indirect cost (overhead) rate was 40.95% of direct labor cost as of May 31, or about 5.2% of the budgeted rate of 43.00% for FY 08-09. Overhead expenditures are expected to escalate during the last month of the fiscal year, bringing the actual closer to the budgeted rate of 43.0%.

Overall (Figures 3, 4, 7 & 8)

At May 31, the agency's finances are reasonably close to forecast with a modest deficit of roughly \$160 thousand, or 0.98% of the year-to-date revenues. ABAG's cash flow is being adversely impacted by the State's cash flow problems and delays in reimbursements as seen in increased accounts receivable, with the State Controller threatening to suspend all payments due to the shortage of cash at the State level. The receipt of membership dues helps alleviate current liquidity constraints. At present, there appears to be sufficient funding to cover grant-funded staff affected by the suspended projects through the end of the fiscal year and into the first months of the new fiscal year. However, to conserve cash as receivables continue to increase, the agency will defer its contribution toward retiree medical liabilities. The line of credit is in place should the agency need to borrow short term funds to cover agency commitments before the end of the calendar year.

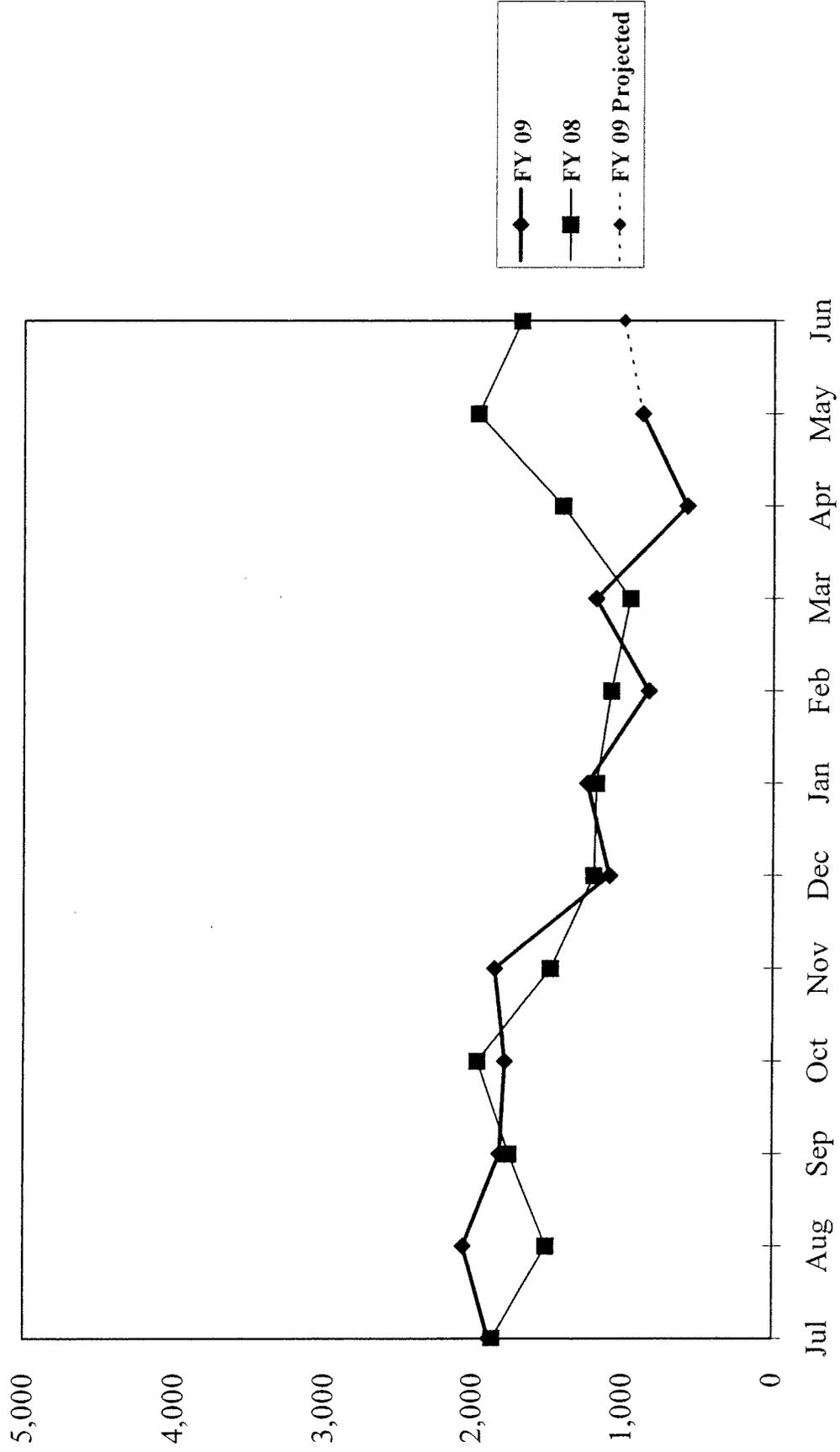
# ABAG FINANCIAL REPORTS

## Table of Contents

* Cash on Hand .....	Figure 1
* Accounts Receivable .....	Figure 2
* Current Month Revenues and Expenses .....	Figure 3
* Year-to-date Revenues and Expenses .....	Figure 4
* Fund Equity .....	Figure 5
* Indirect Cost Rate (% of Direct Labor Cost) .....	Figure 6
* Composition of Expenses .....	Figure 7
* Composition of Revenues .....	Figure 8
* Actual vs. Budgeted Expenses .....	Figure 9
* Actual vs. Budgeted Revenues .....	Figure 10
* Description of Charts	

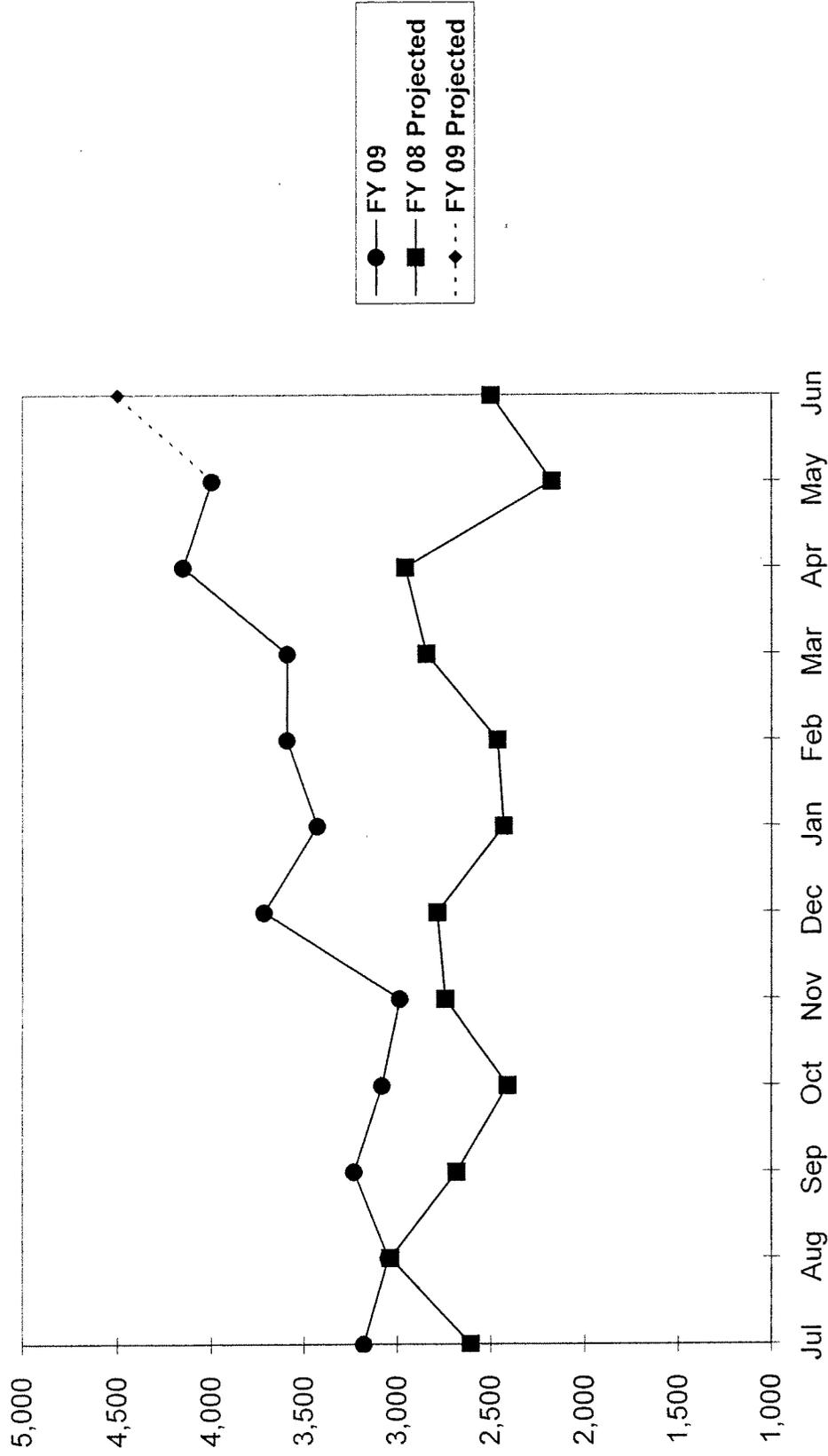
# ABAG Financial Indices

## Cash on Hand FY 08 and FY 09 (\$'000)



# ABAG Financial Indices

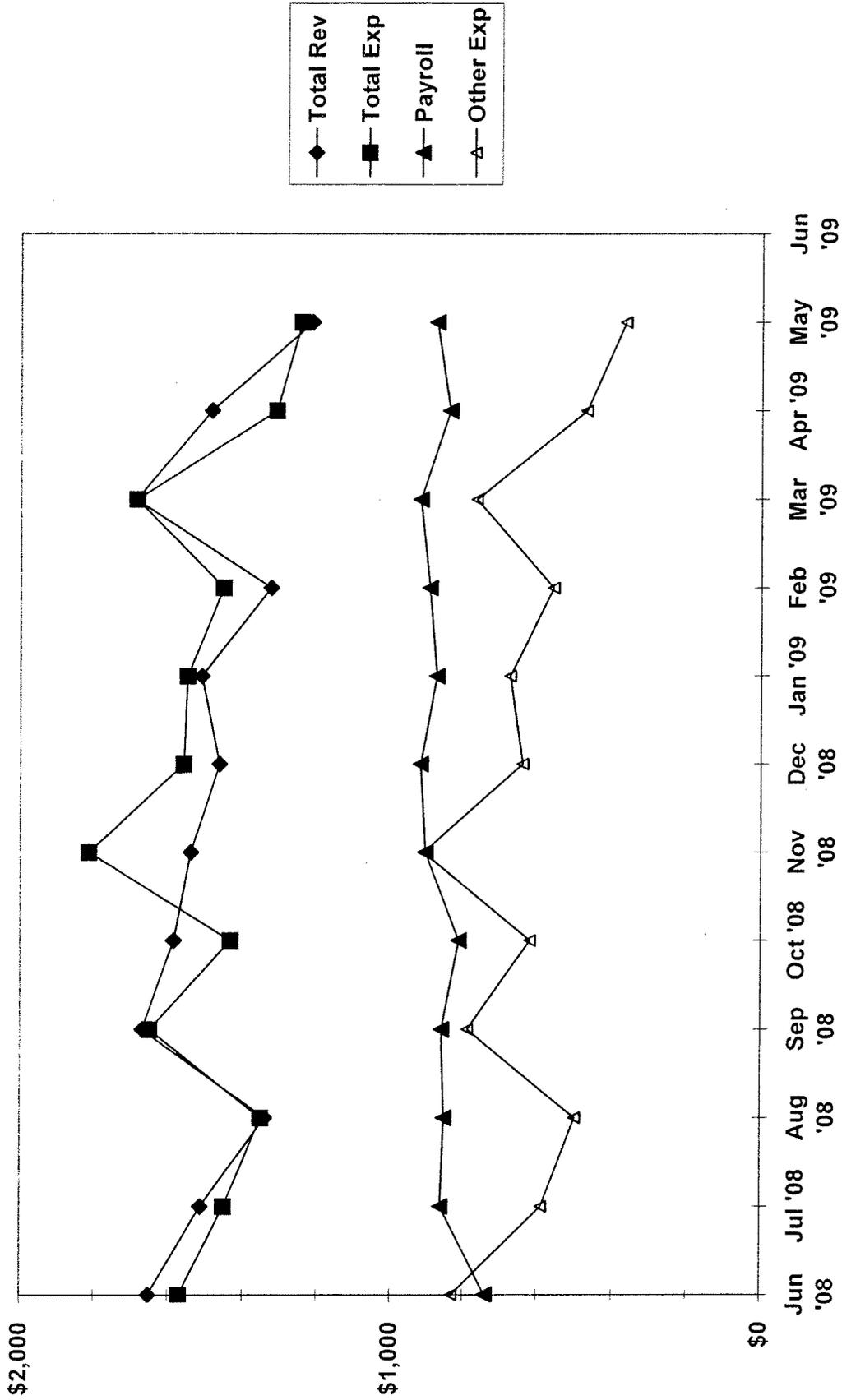
Accounts Receivable FY 08 and FY09 (\$'000)



# ABAG Financial Indices

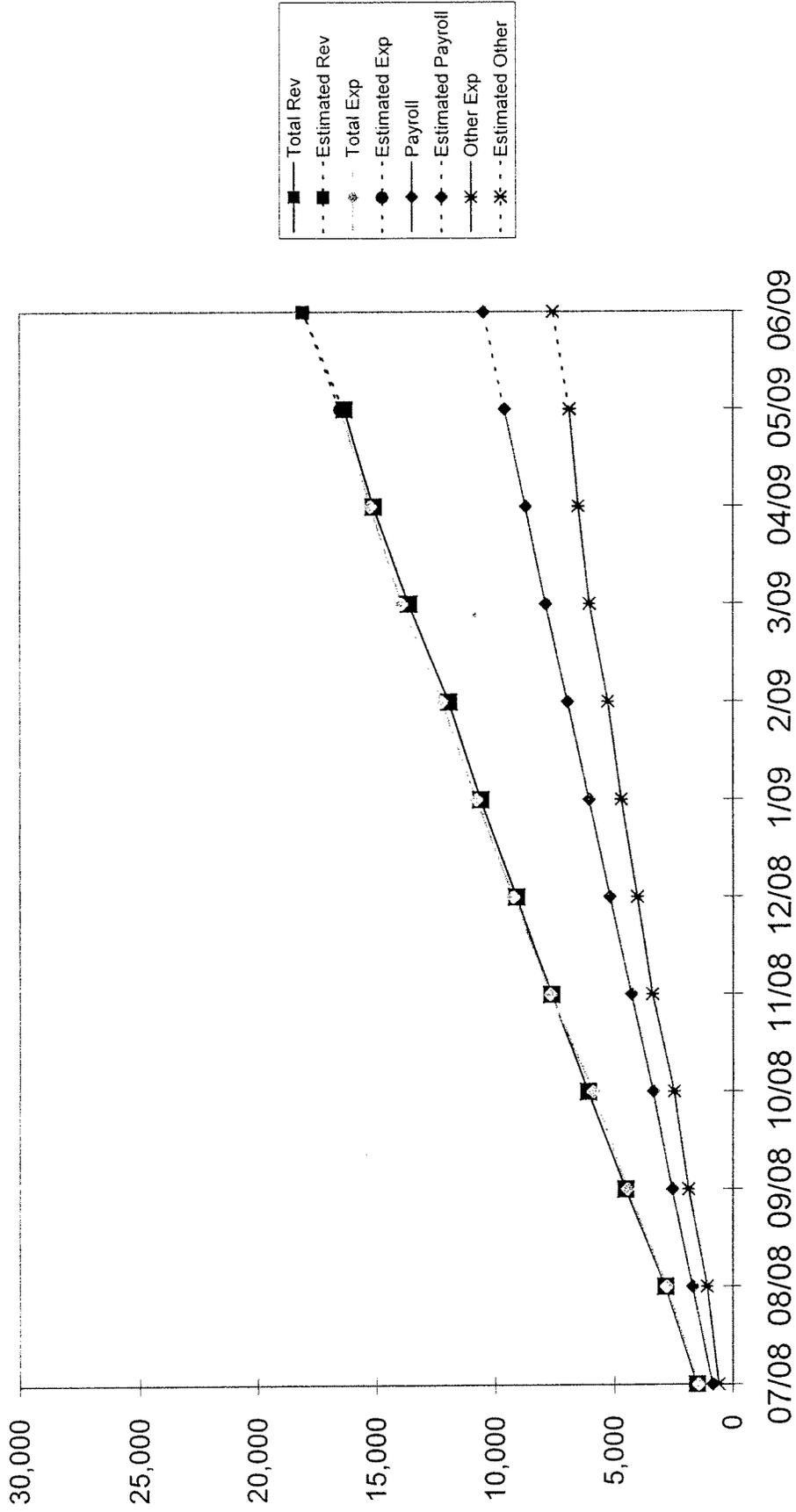
## Current Month Revenues & Expenses

FY 08-09 (\$'000)



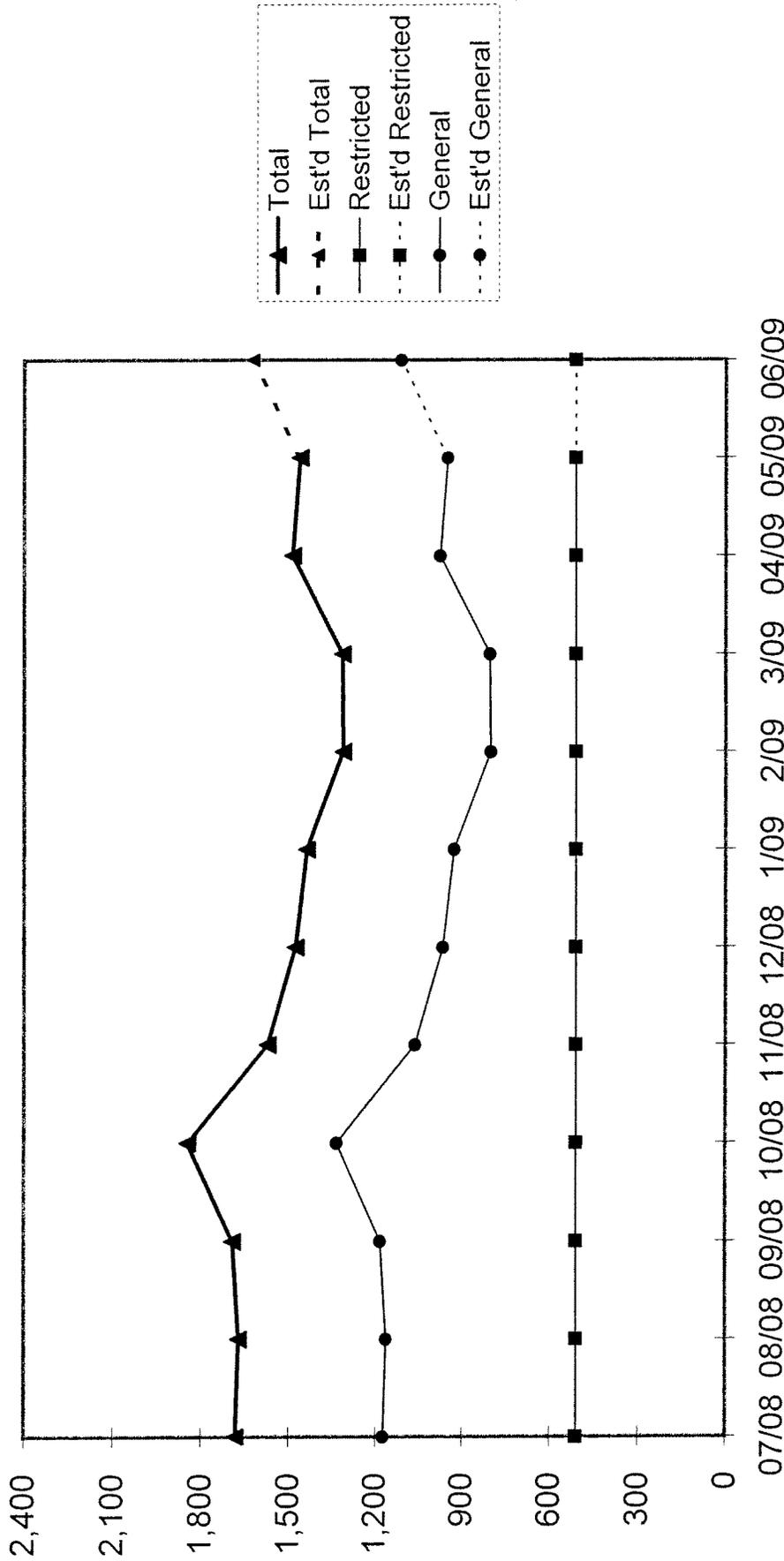
# ABAG Financial Indices

## Year-to-date Revenues & Expenses FY 08-09 (\$'000)

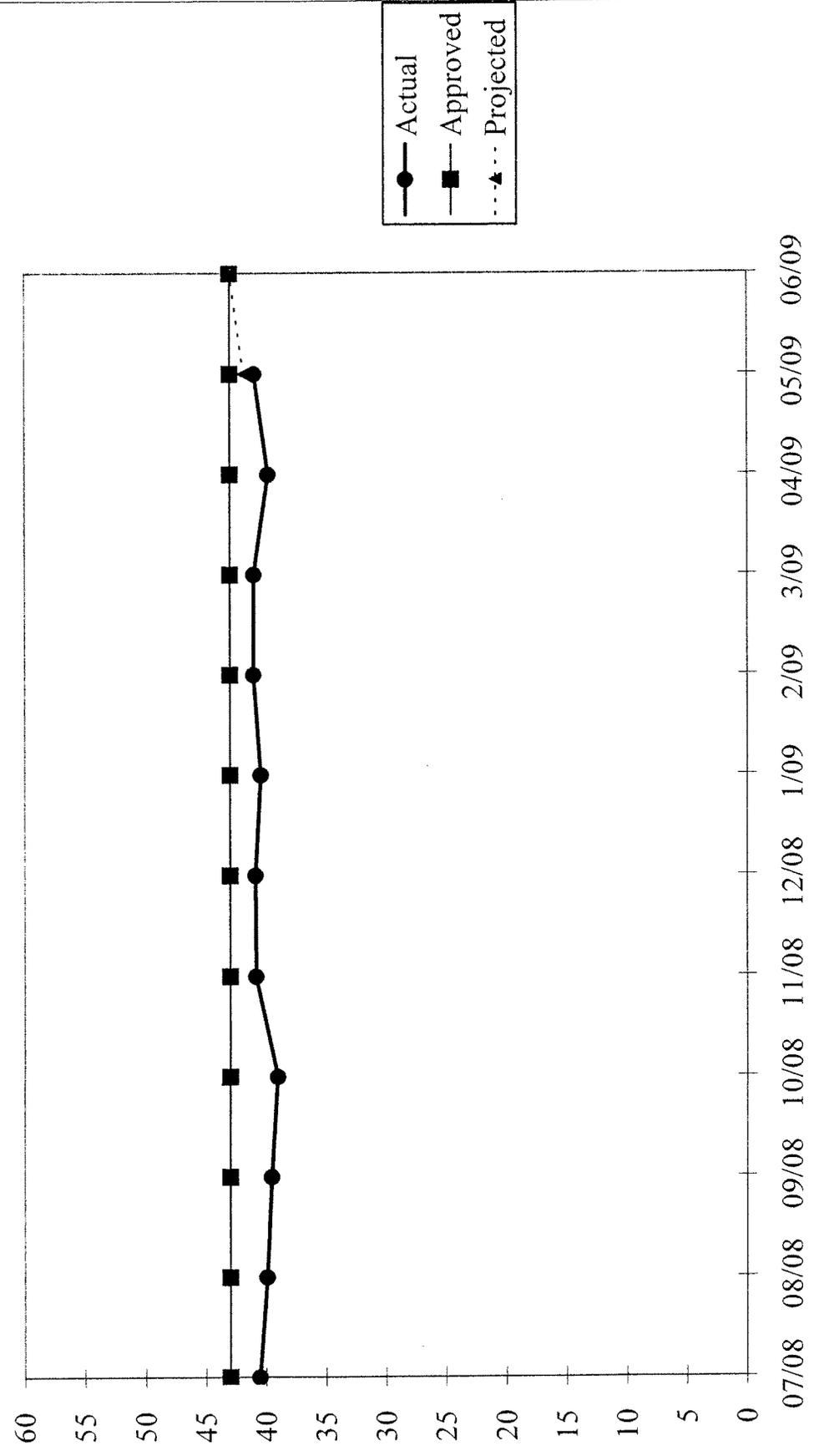


# ABAG Financial Indices

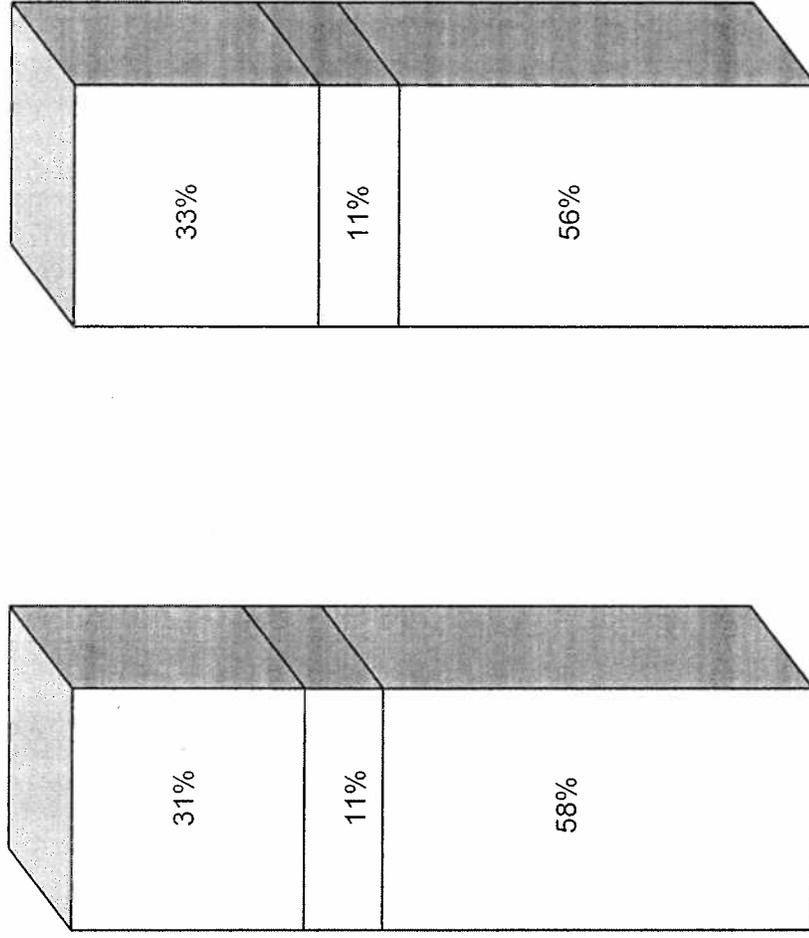
*Fund Equity*  
FY 08-09 (\$'000)



**ABAG Financial Indices**  
*Indirect Cost Rate (% of Direct Labor Cost)*  
 FY 08-09



**ABAG Financial Indices  
Composition of Expenses FY 08 -- FY 09  
Year to Date  
(\$'000)**



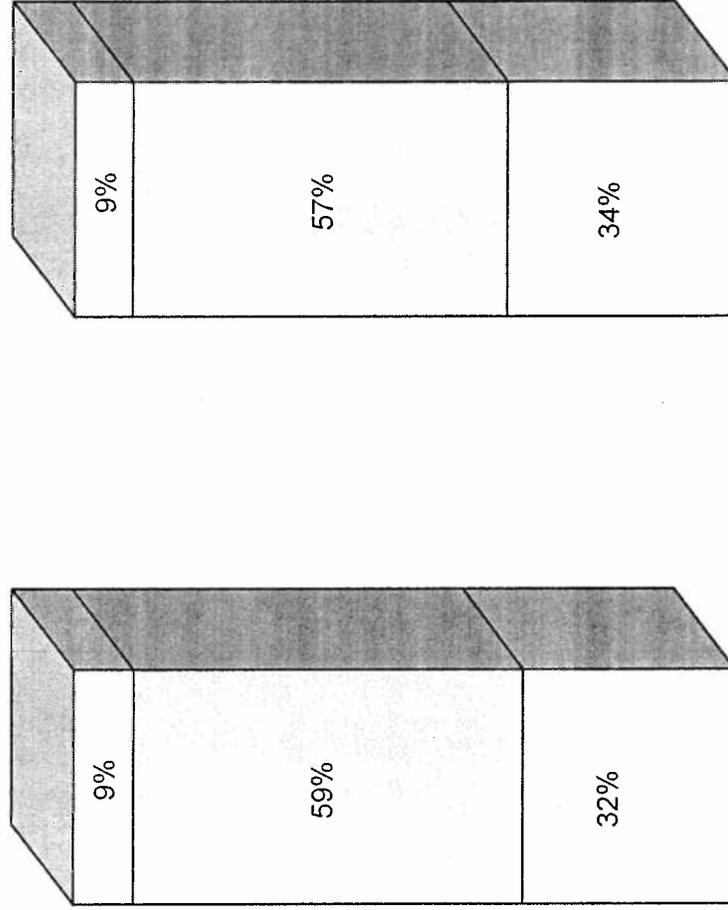
	FY08-09 Expenses (Total \$16,510)	FY07-08 Expenses (Total \$15,688)
<input type="checkbox"/> Consultants	\$5,144	\$5,135
<input type="checkbox"/> Others	\$1,750	\$1,708
<input type="checkbox"/> Payroll	\$9,616	\$8,845

# ABAG Financial Indices

## Composition of Revenues FY 08-- FY 09

### Year to Date

(\$'000)

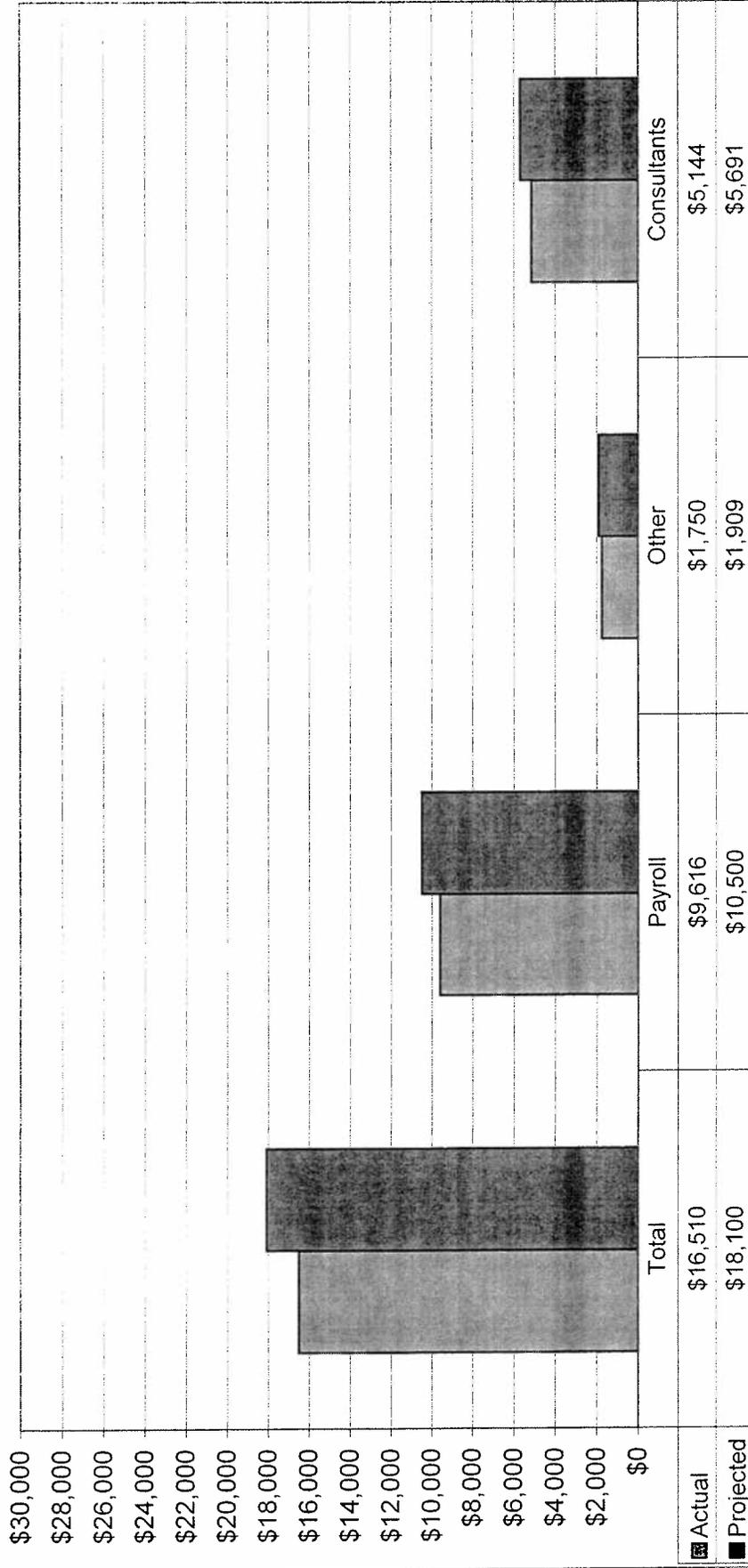


	FY 08-09 Revenue (Total \$16,348)	FY 07-08 Revenue (Total \$15,757)
Membership	\$1,469	\$1,380
Grants	\$9,664	\$8,956
Services & Others	\$5,215	\$5,421

# ABAG Financial Indices

## Actual vs Projected Expenses--FY 08-09

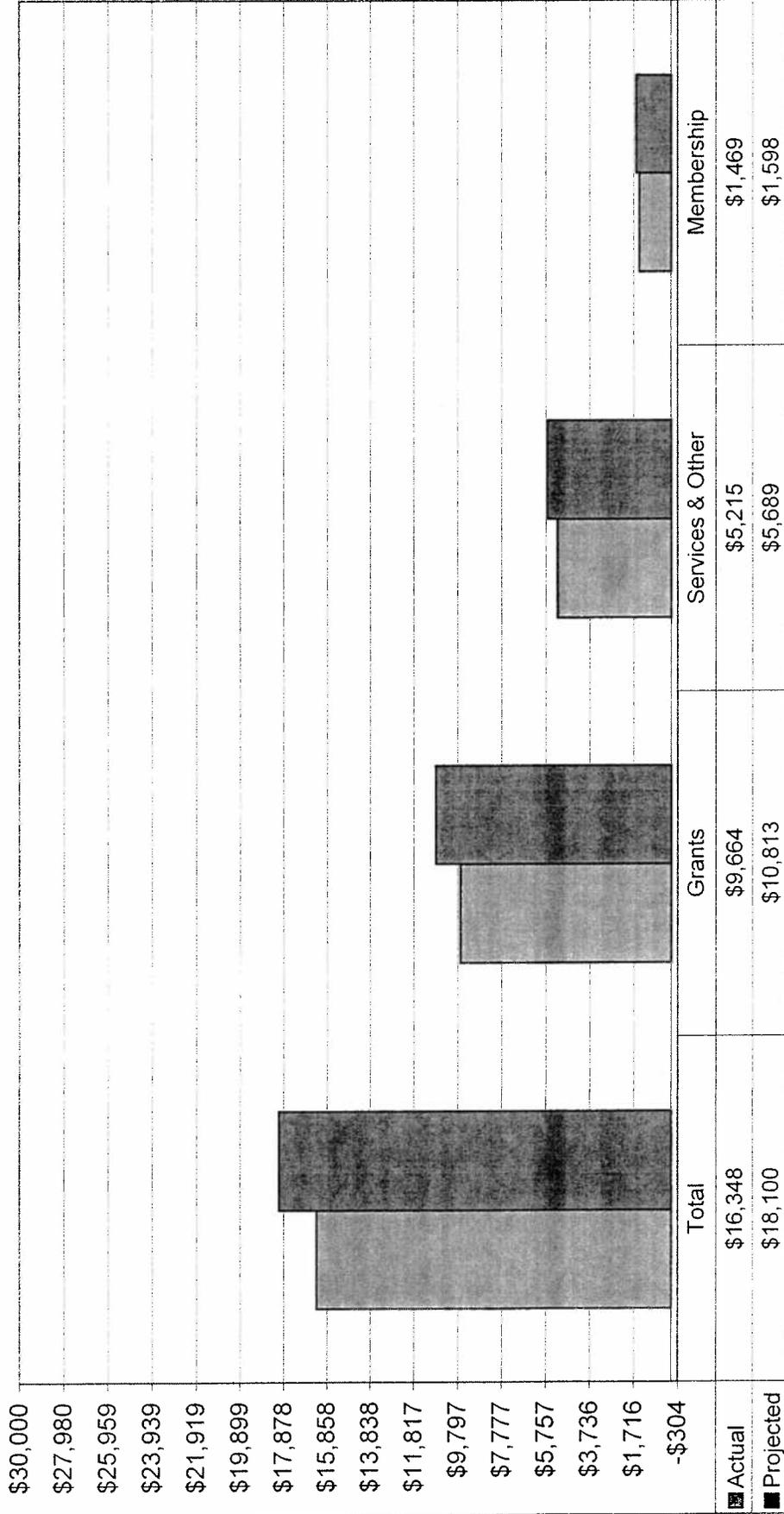
### Year-to-Date (\$'000)



## ABAG Financial Indices

### Actual vs Projected Revenues--FY 08-09

#### Year-to-Date (\$'000)



## Description of Charts

### Figure 1 -- Cash on Hand

Cash on hand represents the sum total of cash deposited at our bank and the Local Agency Investment Fund (LAIF). This chart shows fluctuation patterns of cash on hand for the current and last fiscal years.

### Figure 2 -- Accounts Receivable

Accounts receivable tracked by this chart include receivables generated by grants and service programs over two fiscal years. This chart reflects the reasonableness of our receivable levels. We usually have about six weeks' worth of our annual revenues in receivables.

### Figure 3 -- Current Month Revenues and Expenses

Presents month by month total revenues, total expenses, payroll and other expenses for the current fiscal year. The difference between total revenues and total expenses lines represents the overall current month net surplus (or deficit) for the agency.

### Figure 4 -- Year-to-date Revenues and Expenses

Presents year-to-date total revenues, total expenses, payroll and other expenses for the current fiscal year. The difference between total revenues and total expenses lines represents the overall year-to-date net surplus (or Deficit) for the agency.

### Figure 5 --Fund Equity

Presents general, restricted and total fund equities for the current fiscal year. General fund equity represents unrestricted equity. Restricted equities include building bond interest, building maintenance, self-insurance and capital. These restricted equities represent the agency's equities set aside for specific purposes as approved by the Finance and Personnel Committee. Total equity is the sum total of general and restricted equities.

### Figure 6 -- Indirect Cost Rate (% of Direct Labor Cost)

This chart shows a comparison between the actual indirect cost rate and the approved rate. The approved indirect cost rate is computed by dividing total estimated overhead expenses by total projected direct labor cost for a fiscal year. This rate is used as a standard overhead cost rate to allocate indirect costs to all projects. This process is performed in accordance with an indirect cost plan, which is prepared annually in accordance with OMB A-87.

Figure 7 – Composition of Expenses

This chart compares expenses for current and last fiscal years. It groups expenses into two broad categories -- payroll costs and other expenses.

Figure 8 -- Composition of Revenues

Presents a break down of total revenues into four main sources -- membership, grants, services and others. This chart compares revenue sources between current and last fiscal years.

Figure 9 -- Actual vs. Budgeted Expenses

Presents a comparison of actual and budgeted total expenses as well as component categories: payroll costs, consultants and other expenses.

Figure 10 -- Actual vs. Budgeted Revenues)

Presents a comparison of actual and budgeted total revenues as well as component categories: membership dues, grants, services and other.



PRESIDENT Supervisor Rose Jacobs Gibson, County of San Mateo  
 VICE PRESIDENT Mayor Mark Green, City of Union City  
 IMMEDIATE PAST PRESIDENT Supervisor David D. Cortese, County of Santa Clara  
 SECRETARY-TREASURER Henry L. Gardner  
 LEGAL COUNSEL Kenneth K. Moy

County of	Representative	Alternate
ALAMEDA	** Supervisor Gail Steele	Supervisor Alice Lai-Bitker
ALAMEDA	** Supervisor Scott Haggerty	Supervisor Nathan Miley
CONTRA COSTA	* Supervisor Gayle B. Uilkema	Supervisor Susan Bonilla
CONTRA COSTA	* Supervisor John Gioia	Supervisor Mary Plepho
MARIN	** Supervisor Susan Adams	Supervisor Judy Arnold
NAPA	** Supervisor Mark Luce	Supervisor Bill Dodd
SAN FRANCISCO	** Supervisor John Avalos	To Be Appointed
SAN FRANCISCO	** Supervisor Ross Mirkarimi	To Be Appointed
SAN MATEO	* Supervisor Rose Jacobs Gibson	Supervisor Mark Church
SAN MATEO	* Supervisor Carole Groom	Supervisor Rich Gordon
SANTA CLARA	** Supervisor Ken Yeager	Supervisor Donald Gage
SANTA CLARA	** Supervisor Dave Cortese	Supervisor George Shirakawa
SOLANO	* Supervisor Barbara Kondyitis	Supervisor James Spering
SONOMA	* Supervisor Mike Kerns	Supervisor Shirlee Zane

Cities in the County of	Representative	Alternate
ALAMEDA	* Mayor Beverly Johnson (Alameda)	Mayor Tony Santos (San Leandro)
ALAMEDA	* Mayor Mark Green (Union City)	Mayor Michael Sweeney (Hayward)
CONTRA COSTA	** Mayor Julie Pierce (Clayton)	Councilmember Dave Hudson (San Ramon)
CONTRA COSTA	** Councilmember Joanne Ward (Hercules)	Councilmember Ben Johnson (Pittsburg)
MARIN	* Councilmember Carole Dillon-Knutson (Novato)	Councilmember Shawn Marshall (Mill Valley)
NAPA	* Mayor Jack Gingles (Calistoga)	Mayor Leon Garcia (American Canyon)
CITY OF SAN FRANCISCO	* Mayor Gavin Newsom	Mike Farrah, Senior Advisor to the Mayor
CITY OF SAN FRANCISCO	* Nancy Kirshner Rodriguez, Government Affairs Dir.	Christine DeBerry, Board Liaison
CITY OF SAN FRANCISCO	* Hydra Mendoza, Education Advisor	Wade Crowfoot, Climate Protection Initiatives Dir.
SAN MATEO	** Mayor A. Sepi Richardson (Brisbane)	Councilmember Pedro Gonzalez (S San Francisco)
SAN MATEO	** Councilmember Richard Garbarino (S San Francisco)	Councilmember John Boyle (Menlo Park)
SANTA CLARA	* Councilmember Dan Furtado (Campbell)	Mayor Pro Tem David Casas (Los Altos)
SANTA CLARA	* Councilmember Joe Pirzynski (Los Gatos)	Vice Mayor Ronit Bryant (Mountain View)
SOLANO	** Mayor Len Augustine (Vacaville)	Mayor Harry Price (Fairfield)
SONOMA	** Mayor Pamela Toriatt (Petaluma)	Mayor Susan Gorin (Santa Rosa)
CITY OF OAKLAND	* Vice Mayor Jean Quan	To Be Appointed
CITY OF OAKLAND	* Councilmember Jane Brunner	To Be Appointed
CITY OF OAKLAND	* Councilmember Nancy Nadel	To Be Appointed
CITY OF SAN JOSE	* Councilmember Sam Liccardo	Councilmember Rose Herrera
CITY OF SAN JOSE	* Councilmember Kansen Chu	Councilmember Nancy Pyle
CITY OF SAN JOSE	* Councilmember Ash Kalra	Mayor Chuck Reed

Advisory Members	Representative	Alternate
RWQCB	Terry Young	Bill Peacock

\* Term of Appointment: July 1, 2009 - June 30, 2011

\*\* Term of Appointment: July 1, 2007 - June 30, 2009



**ABAG**

# Meeting Schedule **2009**

## Executive Board Meetings

January 15  
March 19  
May 21  
July 16  
September 17  
November 19

### START TIME

7:00 PM

### LOCATION

Joseph P. Bort MetroCenter Auditorium  
101 Eighth Street  
Oakland, California 94607  
Across from the Lake Merritt BART Station

## Spring General Assembly

April 23  
Palace Hotel  
San Francisco

## Fall General Assembly

October 22  
Westin St. Francis Hotel  
San Francisco