



## *Memorandum*

**To:** Association of Bay Area Governments (ABAG)  
**From:** Juliet Leftwich, LCAV Legal Director; Lindsay Nichols, LCAV Staff Attorney  
**Date:** November 2, 2009  
**Re:** Revisions to Model Law Regulating Firearms Dealers and Ammunition Sellers Following Enactment of AB 962

On October 11, 2009, Governor Schwarzenegger signed AB 962 (De Leon), landmark legislation to help reduce illegal ammunition sales. As discussed below, LCAV has made several changes to its Model Ordinance Regulating Firearms Dealers and Ammunition Sellers to reflect the new law.

### **AB 962**

AB 962 was introduced by Assemblymember Kevin De Leon, co-sponsored by LCAV, and endorsed by ABAG. Under AB 962, sellers of handgun ammunition will be required to:

- Maintain records containing identifying information about the purchaser and the handgun ammunition being sold (effective February 1, 2011); and
- Store handgun ammunition so that it is inaccessible to purchasers without the assistance of the vendor (effective January 1, 2010).<sup>1</sup>

LCAV's Model Ordinance Regulating Firearms Dealers and Ammunition Sellers also includes these requirements. Unlike AB 962, however, LCAV's Model Law applies these requirements to all ammunition, not just handgun ammunition.

### **Revisions to LCAV's Model Law Regulating Firearms Dealers and Ammunition Sellers**

In light of the state's adoption of AB 962, LCAV has amended its Model Law Regulating Firearms Dealer and Ammunition Sellers so that it:

- Describes the relevant provisions of AB 962 in the Findings;
- Includes a sunset provision so that the requirement that ammunition sellers create and maintain records of sales or transfers of ammunition ceases to apply to handgun ammunition on February 1, 2011, the date the statewide record-keeping requirement for handgun ammunition sales and transfers becomes effective under AB 962; and
- No longer requires sellers of ammunition to store handgun ammunition in any particular way, because, as of January 1, 2010, the storage of handgun ammunition will be governed by the provisions of AB 962. The Model Law continues to mandate the safe storage of long gun ammunition, however.

These changes are intended to avoid duplication between the Model Law and AB 962.

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<sup>1</sup> The law also will require that handgun ammunition sales be completed in face-to-face transactions (effective February 1, 2011). In addition, it prohibits persons subject to gang injunctions from possessing ammunition, and prohibits ammunition sales to any person the seller knows or has cause to believe is prohibited from possessing ammunition (effective January 1, 2010).

## **A Note About Implied Preemption**

Although opponents of local ordinances requiring sellers to maintain long gun ammunition sales logs or store long gun ammunition safely may argue that AB 962 impliedly preempts such requirements, we believe such arguments are without merit. There is no evidence to suggest that the Legislature intended, through AB 962, to remove local authority to regulate long gun ammunition sales record-keeping or storage. While implied preemption is a complicated legal issue, and this is an open question for the courts, we believe strong legal arguments support the continued ability of cities and counties in California to legislate in this area. LCAV encourages the County Counsel or City Attorney in each jurisdiction considering such an ordinance to carefully consider the issue of preemption.

For more information about state preemption of local authority to regulate firearms and ammunition in California, please see Part II of the Model Law, entitled Common Legal Challenges to Gun Violence Prevention Laws, as well as the section on State Preemption on LCAV's California State Law Summary webpage, at <http://www.lcav.org/states/california.asp#PreemptionDistributionofPower>. LCAV is available to discuss the issue with local jurisdictions in greater detail as needed. Please contact LCAV at 415-433-2062 if we can be of assistance.