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CITY OF OAKLAND

Councilmembers Desley Brooks, and Rebecca Kaplan

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmembers Desley Brooks, and Rebecca Kaplan

Date: March 24, 2016

Subject: Resolution of Support for SB 1446: Prohibits Possession of Large Capacity
Ammunition Magazines

Colleagues on the City Council and Members of the Public,

With our Resolution of Support for SB 1446 (Hancock), we are submitting the attached Fact Sheet, and text of the bill.

Respectfully submitted,

Desley Brooks, Councilmember

Rebecca Kaplan, Councilmember

SB 1446 - FACT SHEET

Senator Loni Hancock (D – 09)
Large Capacity Ammunition Magazines

PURPOSE

This measure will prohibit the possession of large capacity ammunition magazines (defined as ammunition feeding devices holding more than 10 rounds). Current and retired police officers would be exempt from the ban.

BACKGROUND

In 2011, Jared Lee Loughner was able to fire 31 bullets in 15 seconds because he had supersized his Glock 19 handgun with a high-capacity magazine. In that 15 seconds he shot 19 people – killing federal Judge John Roll and five others and wounding 13, including U.S. Representative Gabrielle Giffords.

Loughner's massacre ended only when he stopped to reload and bystanders wrestled him to the ground. If he had used a standard magazine and was forced to reload earlier, some of his victims might have been spared.

In 1999, the Legislature passed SB 23 (Perata) which prohibited the possession of assault weapons, such as the AK-47 and created a generic definition of an assault weapon. As part of that legislation, the importation, manufacture and sale of large capacity ammunition magazines was strictly prohibited. However, the possession of high capacity magazines was not prohibited.

Federal law also outlawed possession of high capacity magazines as part of the 1994 federal assault weapons ban but allowed current owners to keep them under a “grandfathering” provision.

The federal assault weapons ban was allowed to expire in 2004. Research has shown that, prior to the implementation of the federal assault weapons ban, these high capacity magazines were used in between 14 and 26% of guns used in crime.

NEED FOR THE BILL

High capacity ammunition magazines are ammunition feeding devices that hold more than ten rounds of ammunition. These mega-magazines can hold upwards of 100 rounds of ammunition and allow a shooter to rapidly fire without reloading.

High capacity magazines are **not** designed for hunting or target shooting. High capacity magazines are military designed devices designed for one purpose only -- to allow a shooter to fire a large number of bullets in a short period of time.

This bill will make clear that possession of these “mega-magazines” is prohibited. Law enforcement officers have told us that, because the Penal Code currently fails to specifically prohibit possession, the law is very difficult to enforce. This needs to be fixed and this measure addresses that by prohibiting the possession.

FOR MORE INFORMATION

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Introduced by Senator HancockFebruary 19, 2016

An act to amend Sections 16350, 16740, 32310, 32400, 32405, 32435, and 32450 of, and to add Section 32406 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1446, as introduced, Hancock. Firearms: magazine capacity.

(1) Existing law, for purposes pertaining to the ammunition capacity of certain assault weapons, defines "capacity to accept more than 10 rounds" to mean capable of accommodating more than 10 rounds, but specifies that this term does not apply to a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

This bill would revise that definition to mean capable of holding more than 10 rounds of ammunition, but not applying to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds of ammunition.

(2) Existing law prohibits the sale, gift, and loan of a large-capacity magazine. A violation of this prohibition is punishable as a misdemeanor with specified penalties or as a felony. Existing law defines "large-capacity magazine" to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but provides that the definition may not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

This bill would include within that definition of large-capacity magazine a feeding device that had a capacity of more than 10 rounds of ammunition but has been permanently modified to hold no more than 10 rounds of ammunition, and would exclude from that definition a

magazine that is only of sufficient size to hold no more than 10 rounds of ammunition. The bill would, commencing July 1, 2017, make it an infraction punishable by a fine not to exceed \$100 for the first offense, by a fine not to exceed \$250 for the second offense, or by a fine not to exceed \$1,000 for the third or subsequent offense, or a misdemeanor punishable by a fine not to exceed \$100 for the first offense, by a fine not to exceed \$250 for the second offense, or by a fine not to exceed \$1,000 for the third or subsequent offense, for a person to possess any large-capacity magazine, regardless of the date the magazine was acquired. The bill would require a person in lawful possession of a large-capacity magazine prior to July 1, 2017, to dispose of the magazine, as provided.

By creating a new crime, this bill would impose a state-mandated local program.

(3) Existing law creates various exceptions to the crime described in paragraph (2) above, which include, but are not limited to, the sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by the holder of a special weapons permit for use as a prop for a motion picture, or any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

This bill would make conforming changes to those exceptions by including possession of a large-capacity magazine in those provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 16350 of the Penal Code is amended to
- 2 read:
- 3 16350. As used in Section 30515, “capacity to accept more
- 4 than 10 rounds” means capable of ~~accommodating~~ *holding* more

1 than 10 rounds of ammunition. The term phrase does not apply to
2 a feeding device that has been permanently altered so that it cannot
3 accommodate hold more than 10 rounds of ammunition.

4 SEC. 2. Section 16740 of the Penal Code is amended to read:

5 16740. (a) As used in this part, “large-capacity magazine”
6 means any ammunition feeding device with the capacity to accept
7 more than 10 rounds, but shall not be construed to include any of
8 the following: rounds. As used in this part, “large-capacity
9 magazine” also includes a feeding device that had a capacity of
10 more than 10 rounds of ammunition but has been permanently
11 altered to hold no more than 10 rounds of ammunition.

12 (b) As used in this part, “large-capacity magazine” does not
13 include any of the following:

14 (a)

15 (1) A feeding device that has been permanently altered so that
16 it cannot accommodate magazine that is only of sufficient size to
17 hold no more than 10 rounds. rounds of ammunition.

18 (b)

19 (2) A .22 caliber tube ammunition feeding device.

20 (c)

21 (3) A tubular magazine that is contained in a lever-action
22 firearm.

23 SEC. 3. Section 32310 of the Penal Code is amended to read:

24 32310. (a) Except as provided in Article 2 (commencing with
25 Section 32400) of this chapter and in Chapter 1 (commencing with
26 Section 17700) of Division 2 of Title 2, ~~commencing January 1,~~
27 ~~2000~~, any person in this state who manufactures or causes to be
28 manufactured, imports into the state, keeps for sale, or offers or
29 exposes for sale, or who gives, lends, buys, or receives or lends,
30 any large-capacity magazine is punishable by imprisonment in a
31 county jail not exceeding one year or imprisonment pursuant to
32 subdivision (h) of Section 1170.

33 (b) Except as provided in Article 2 (commencing with Section
34 32400) of this chapter and in Chapter 1 (commencing with Section
35 17700) of Division 2 of Title 2, commencing July 1, 2017, any
36 person in this state who possesses any large-capacity magazine,
37 regardless of the date the magazine was acquired, is guilty of an
38 infraction punishable by a fine not to exceed one hundred dollars
39 (\$100) upon the first offense, by a fine not to exceed two hundred
40 fifty dollars (\$250) upon the second offense, and by a fine not to

1 *exceed one thousand dollars (\$1,000) upon the third or any*
2 *subsequent offense, or is guilty of a misdemeanor punishable by*
3 *a fine not to exceed one hundred dollars (\$100) upon the first*
4 *offense, by a fine not to exceed two hundred fifty dollars (\$250)*
5 *upon the second offense, and by a fine not to exceed one thousand*
6 *dollars (\$1,000) upon the third or subsequent offense.*

7 *(c) A person who, prior to July 1, 2017, legally possesses a*
8 *large-capacity magazine shall dispose of that magazine by any of*
9 *the following means:*

10 *(1) Remove the large-capacity magazine from the state.*

11 *(2) Prior to July 1, 2017, sell the large-capacity magazine to a*
12 *licensed firearms dealer.*

13 *(3) Destroy the large-capacity magazine.*

14 *(4) Surrender the large-capacity magazine to a law enforcement*
15 *agency for destruction.*

16 *(b)*

17 *(d) For purposes of this section, “manufacturing” includes both*
18 *fabricating a magazine and assembling a magazine from a*
19 *combination of parts, including, but not limited to, the body, spring,*
20 *follower, and floor plate or end plate, to be a fully functioning*
21 *large-capacity magazine.*

22 SEC. 4. Section 32400 of the Penal Code is amended to read:

23 32400. Section 32310 does not apply to the sale of, giving of,
24 lending of, *possession of*, importation into this state of, or purchase
25 of, any large-capacity magazine to or by any federal, state, county,
26 city and county, or city agency that is charged with the enforcement
27 of any law, for use by agency employees in the discharge of their
28 official duties, whether on or off duty, and where the use is
29 authorized by the agency and is within the course and scope of
30 their duties.

31 SEC. 5. Section 32405 of the Penal Code is amended to read:

32 32405. Section 32310 does not apply to the sale to, lending to,
33 transfer to, purchase by, receipt of, *possession of*, or importation
34 into this state of, a large-capacity magazine by a sworn peace
35 officer, as defined in Chapter 4.5 (commencing with Section 830)
36 of Title 3 of Part 2, *or sworn federal law enforcement officer* who
37 is authorized to carry a firearm in the course and scope of that
38 officer’s duties.

39 SEC. 6. Section 32406 is added to the Penal Code, to read:

1 32406. Subdivisions (b) and (c) of Section 32310 do not apply
2 to an individual who honorably retired from being a sworn peace
3 officer, as defined in Chapter 4.5 (commencing with Section 830)
4 of Title 3 of Part 2, or an individual who honorably retired from
5 being a sworn federal law enforcement officer, who was authorized
6 to carry a firearm in the course and scope of that officer's duties.
7 For purposes of this section, "honorably retired" has the same
8 meaning as provided in Section 16690.

9 SEC. 7. Section 32435 of the Penal Code is amended to read:

10 32435. Section 32310 does not apply to any of the following:

11 (a) The sale of, giving of, lending of, *possession of*, importation
12 into this state of, or purchase of, any large-capacity magazine, to
13 or by any entity that operates an armored vehicle business pursuant
14 to the laws of this state.

15 (b) The lending of large-capacity magazines by an entity
16 specified in subdivision (a) to its authorized employees, *and the*
17 *possession of those large-capacity magazines by those authorized*
18 *employees*, while in the course and scope of employment for
19 purposes that pertain to the entity's armored vehicle business.

20 (c) The return of those large-capacity magazines to the entity
21 specified in subdivision (a) by those employees specified in
22 subdivision (b).

23 SEC. 8. Section 32450 of the Penal Code is amended to read:

24 32450. Section 32310 does not apply to the purchase *or*
25 *possession* of a large-capacity magazine by the holder of a special
26 weapons permit issued pursuant to Section 31000, 32650, or 33300,
27 or pursuant to Article 3 (commencing with Section 18900) of
28 Chapter 1 of Division 5 of Title 2, or pursuant to Article 4
29 (commencing with Section 32700) of Chapter 6 of this division,
30 for any of the following purposes:

31 (a) For use solely as a prop for a motion picture, television, or
32 video production.

33 (b) For export pursuant to federal regulations.

34 (c) For resale to law enforcement agencies, government
35 agencies, or the military, pursuant to applicable federal regulations.

36 SEC. 9. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS DESLEY BROOKS, AND REBECCA KAPLAN

RESOLUTION IN SUPPORT OF SB 1446 (HANCOCK) THAT WOULD PROHIBIT POSSESSION OF LARGE CAPACITY AMMUNITION MAGAZINES

WHEREAS, Prior to the implementation of the federal assault weapons ban in 1994 which outlawed possession of high capacity magazines as part of the 1994 federal assault weapons ban but allowed current owners to keep them under a "grandfathering" provision, high capacity magazines were used in between 14 and 26% of guns used in crimes; and

WHEREAS, Legislature passed SB 23 (Perata) in 1999 that prohibited the importation, manufacture and sale of large capacity ammunition magazines under a generic definition of assault weapon but did not prohibit the possession of high capacity magazine; and

WHEREAS, Existing law defines "high capacity" to mean the capacity to accept or accommodate more than 10 rounds of ammunition but does not apply to an altered feeding device; and

WHEREAS, The City of Oakland continues to deal with the high number of crimes including homicides reported involving firearms; and

WHEREAS, Senate Bill (SB) 1446 (Hancock) would revise the existing law which prohibits the sale, gift, and loan of a large capacity magazine to include within that definition to mean, capable of holding more than 10 rounds of ammunition, and requires a person in lawful possession of large capacity magazines prior to July 1, 2017 to dispose of magazines as provided; and now, therefore, be it

RESOLVED: That the Oakland City Council hereby endorses SB 1446 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California