To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín, Vice Mayor Susan Wengraf, Councilmember Kate Harrison, and Councilmember Rigel Robinson  
Subject: Support of AB 18 – Firearms Excise Tax

RECOMMENDATION
Adopt a Resolution in support of Assembly Bill (AB) 18, which would place a $25 excise tax on the sale of firearms. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Marc Levine.

BACKGROUND
As of August 18, 2019, there have been 257 mass shootings this year in the United States of America, thirty-three (33) of these have taken place in California. A mass shooting is defined as a single incident in which there are four or more injuries. Mass shootings have become so common in America that foreign countries have issued travel alerts to the United States because of the potential safety risk. In 2017, there were almost 40,000 gun deaths in America, including 3,184 in California.

AB 18, introduced by Assemblymember Marc Levine, would place a $25 excise tax on the sale of all handguns, shotguns, and semiautomatic rifles. While the bill had previously stalled in committee in May – usually a sign that a bill has died for the year – recent mass shootings, including the tragic Gilroy Garlic Festival shooting, has created a new sense of urgency in moving forward with reviving the bill. A new amendment will also be introduced placing a yet to be determined amount excise tax on the sale of ammunition. Revenue generated from this bill would go towards the California Violence Intervention and Prevention Grant Program (CalVIP). CalVIP supports violence intervention and prevention activities, with preference given to cities and regions that have been disproportionately affected by violence.

The Berkeley City Council has a long history of supporting gun safety legislation. In recent years, the Council has supported state and federal bills in support of expanding background checks, a ban on assault rifles and high capacity magazines, and improving research towards gun violence. Locally, the Council has recently approved an ordinance for safe and secure storage of firearms.

FINANCIAL IMPLICATIONS
None.
ENVIRONMENTAL SUSTAINABILITY
Not applicable.

CONTACT PERSON
Mayor Jesse Arreguín  510-981-7100

Attachments:
1: Resolution
2: Text of AB 18
RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF ASSEMBLY BILL 18

WHEREAS, as of August 18, 2019, there have been 257 mass shootings (a single incident in which there are four or more injuries) this year, including 33 in California; and

WHEREAS, in 2017, there were almost 40,000 gun deaths in America, including 3,184 in California; and

WHEREAS, recent mass shootings, such as in Gilroy, El Paso, and Dayton, have reinvigorated the debate over gun safety, placing focus on governments at all levels to move forward on legislation that can help reduce the number of shootings; and

WHEREAS, Assembly Bill 18, introduced by Assemblymember Marc Levine, would place a $25 excise tax on the sale of all handguns, shotguns, and semiautomatic rifles, in addition to an excise tax on ammunition; and

WHEREAS, revenue generated from this bill would go towards the California Violence Intervention and Prevention Grant Program (CalVIP), which supports violence intervention and prevention activities, with preference given to cities and regions that have been disproportionately affected by violence; and

WHEREAS, the Berkeley City Council has a long history of supporting gun safety legislation, including state and federal bills aimed at reducing the number of shootings and gun violence such as extended background checks and bans of assault rifles and high capacity magazines.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports Assembly Bill 18.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Marc Levine.
An act to add Title 10.2 (commencing with Section 14130) to Part 4 of the Penal Code, and to add Part 16 (commencing with Section 36001) to Division 2 of the Revenue and Taxation Code, relating to firearms, and making an appropriation therefor.

LEGISLATIVE COUNSEL’S DIGEST

AB 18, as amended, Levine. Firearms: excise tax.
(1) Existing law establishes the Board of State and Community Corrections. Existing law charges the board with providing the statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California’s adult and juvenile criminal justice system, including addressing gang problems.

The existing Budget Act of 2018, establishes the California Violence Intervention and Prevention (CalVIP) Grant Program, administered by the Board of State and Community Corrections, to award competitive grants for the purpose of violence intervention and prevention.

This bill would codify the establishment of the California Violence Intervention and Prevention Grant Program and the authority and duties
of the board in administering the program, including the selection criteria for grants and reporting requirements to the Legislature.

(2) Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an excise tax on a retailer in the amount of $25 per firearm on the sale in this state of a handgun or semiautomatic rifle or shotgun sold as new, as provided. The tax would be collected by the state pursuant to the Fee Collection Procedures Law. This bill would require that the revenues collected be deposited in the CalVIP Firearm Tax Fund, which the bill would create. The moneys in that fund would be continuously appropriated to the Board of State and Community Corrections to provide CalVIP grants.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

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.


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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Firearms sold by gun dealers contribute to unacceptably high rates of gun violence in communities across California. Dealers are the leading source of firearms trafficked to illegal markets, often through straw purchases as well as preventable losses or thefts. Data from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) indicates that from 2016 to 2018 alone, licensed dealers in California reported losing track of nearly 1,200
firearms from their inventories. The true number of these misplaced firearms, including unreported losses, is likely substantially higher.

(b) Federal law broadly immunizes firearm dealers from civil liability for a wide range of conduct that contributes to death, injury, and other social harms in our state. Essentially no other industry enjoys such a sweeping degree of immunity from civil claims that may incentivize safe and responsible commercial activity. Dealers may also frequently evade other forms of accountability for behaviors that threaten public health and safety. According to a 2013 report by the United States Department of Justice Inspector General, for instance, 38 percent to 53 percent of dealers inspected by ATF from 2004 to 2011 were found to be operating in violation of federal laws “that ban sales to prohibited persons and require inventory and sales to be tracked.” Very few faced any substantial civil or criminal consequences.

(c) Gun dealers’ products impose enormous fiscal burdens on California’s taxpayers, including an estimated $1.4 billion each year for direct public expenditures such as law enforcement, courts, and health care costs in response to firearm deaths and injuries in our state. This estimate does not include other major expenses, such as crime victim compensation, substantially diminished tax revenue due to lost income, depreciated property values, and reduced business activity associated with gun deaths and injuries in California.

(d) In recent years, gun sales have been booming in California. The California Department of Justice processed between 880,000 and 1.33 million dealer records of sale per year between 2015 and 2017, up from 344,000 to 375,000 from 2005 to 2007, just one decade earlier.

(e) At the same time, large spikes in gun violence at the national level have also impacted our state. From 2014 to 2017, gun murder rates rose by 16 percent in California, even as there was no such increase among non-gun homicides.

(f) The excise tax on firearm retailers proposed in this bill is analogous to the Federal Aid in Wildlife Restoration Act, commonly called the Pittman-Robertson Act, which imposes a 10 to 11 percent federal tax on the sale of guns and ammunition by manufacturers, producers, and importers. Revenues from the Pittman-Robertson tax, which has been described as a “legislative model” by the National Rifle Association, fund wildlife
conservation efforts that remediate the effects firearms have on wildlife populations through game hunting.

(g) The purpose of this act is to similarly place a reasonable tax on the firearm industry’s activities in order to fund programs to remediate the devastating effects firearms cause many families and communities across our state. This act is not intended to penalize firearm sellers or otherwise discourage lawful firearm sales and commerce whatsoever, but is intended to fairly generate revenue to fund CalVIP programs that are targeted and effective at mitigating the harms that firearms too often cause.

(h) The CalVIP grant program funds evidence-based violence reduction initiatives that alleviate the societal harms caused by firearms in communities that are disproportionately impacted by gun violence.

SEC. 2. Title 10.2 (commencing with Section 14130) is added to Part 4 of the Penal Code, to read:

TITLE 10.2. CALIFORNIA VIOLENCE INTERVENTION AND PREVENTION GRANT PROGRAM

14130. This title shall be known, and may be cited, as the Break the Cycle of Violence Act.

14131. (a) The California Violence Intervention and Prevention Grant Program (CalVIP) is hereby created to be administered by the Board of State and Community Corrections.

(b) The purpose of CalVIP is to improve public health and safety by supporting effective violence reduction initiatives in communities that are disproportionately impacted by violence, particularly group-member involved homicides, shootings, and aggravated assaults.

(c) CalVIP grants shall be used to support, expand, and replicate evidence-based violence reduction initiatives, including, without limitation, hospital-based violence intervention programs, evidence-based street outreach programs, and focused deterrence strategies, that seek to interrupt cycles of violence and retaliation in order to reduce the incidence of homicides, shootings, and aggravated assaults. These initiatives shall be primarily focused on providing violence intervention services to the small segment of the population that is identified as having the highest risk of perpetrating or being victimized by violence in the near future.
(d) CalVIP grants shall be made on a competitive basis to cities that are disproportionately impacted by violence, and to community-based organizations that serve the residents of those cities.

(e) For purposes of this section, a city is disproportionately impacted by violence if any of the following are true:

1. The city experienced 20 or more homicides per calendar year during two or more of the three calendar years immediately preceding the grant application.

2. The city experienced 10 or more homicides per calendar year and had a homicide rate that was at least 50 percent higher than the statewide homicide rate during two or more of the three calendar years immediately preceding the grant application.

3. An applicant otherwise demonstrates a unique and compelling need for additional resources to address the impact of homicides, shootings, and aggravated assaults in the applicant’s community.

(f) An applicant for a CalVIP grant shall submit a proposal, in a form prescribed by the board, which shall include, but not be limited to, all of the following:

1. Clearly defined and measurable objectives for the grant.

2. A statement describing how the applicant proposes to use the grant to implement an evidence-based violence reduction initiative in accordance with this section.

3. A statement describing how the applicant proposes to use the grant to enhance coordination of existing violence prevention and intervention programs and minimize duplication of services.

4. Evidence indicating that the proposed violence reduction initiative would likely reduce the incidence of homicides, shootings, and aggravated assaults.

(g) In awarding CalVIP grants, the board shall give preference to applicants whose grant proposals demonstrate the greatest likelihood of reducing the incidence of homicides, shootings, and aggravated assaults in the applicant’s community, without contributing to mass incarceration.

(h) The amount of funds awarded to an applicant shall be commensurate with the scope of the applicant’s proposal and the applicant’s demonstrated need for additional resources to address violence in the applicant’s community.
(i) Each grantee shall commit a cash or in-kind contribution equivalent to the amount of the grant awarded under this section. The board may waive this requirement for good cause.

(j) Each city that receives a CalVIP grant shall distribute no less than 50 percent of the grant funds to one or more of any of the following types of entities:

1. Community-based organizations.
2. Public agencies or departments, other than law enforcement agencies or departments, that are primarily dedicated to community safety or violence prevention.

(k) The board shall form a grant selection advisory committee including, without limitation, persons who have been impacted by violence, formerly incarcerated persons, and persons with direct experience in implementing evidence-based violence reduction initiatives, including initiatives that incorporate public health and community-based approaches.

(l) The board may use up to 5 percent of the funds appropriated for CalVIP each year for the costs of administering the program including, without limitation, the employment of personnel, providing technical assistance to grantees, and evaluation of violence reduction initiatives supported by CalVIP.

(m) Each grantee shall report to the board, in a form and at intervals prescribed by the board, their progress in achieving the grant objectives.

(n) The board shall, by no later than April 1, 2024, and every third year thereafter, prepare and submit a report to the Legislature in compliance with Section 9795 of the Government Code regarding the impact of the violence prevention initiatives supported by CalVIP.

(o) The board shall make evaluations of the grant program available to the public.

14132. There is hereby established in the State Treasury the CalVIP Firearm Tax Fund to receive moneys pursuant to Section 36041 of the Revenue and Taxation Code. Notwithstanding Section 13340 of the Government Code, all moneys in the CalVIP Firearm Tax Fund are continuously appropriated without regard to fiscal years to the Board of State and Community Corrections for the purpose of funding grants in accordance with this title.

SEC. 3. Part 16 (commencing with Section 36001) is added to Division 2 of the Revenue and Taxation Code, to read:
PART 16. FIREARM TAX LAW

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

36001. This part shall be known, and may be cited, as the Firearm Tax Law.

36002. For purposes of this part:
(a) “Antique firearm” means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898. This includes any matchlock, flintlock, percussion cap, or similar type of ignition system, or any replica thereof, whether actually manufactured before or after the year 1898, or any firearm manufactured in or before 1898 that uses fixed ammunition no longer manufactured in the United States and not readily available in the ordinary channels of commercial trade.
(b) “Department” means the California Department of Tax and Fee Administration.
(c) “Firearm” means any handgun, semiautomatic shotgun, or semiautomatic rifle. “Firearm” does not include an antique firearm.
(d) “Firearm dealer” means a person described in Section 26700 of the Penal Code.
(e) “Handgun” means any pistol, revolver, or firearm capable of being concealed upon the person.
(f) “Law enforcement agency” means any department or agency of the state or of any county, city, or other political subdivision thereof that employs any peace officer that is authorized to carry a firearm while on duty, or any department or agency of the federal government or a federally recognized Indian tribe with jurisdiction that has tribal land in California, that employs any police officer or criminal investigator authorized to carry a firearm while on duty.
(g) “Peace officer” means any person described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code that is authorized to carry a firearm on duty, or any police officer or criminal investigator employed by the federal government or a federally recognized Indian tribe with jurisdiction that has
tribal land in California, that is authorized to carry a firearm while
on duty.

(g) “Retailer” means any person that is engaged in the business
of making retail sales of goods, including firearms, to the general
public.

(h) “Semiautomatic” refers to a firearm that uses the energy of
the explosive in a fixed cartridge to extract a fired cartridge and
chamber a fresh cartridge with each single pull of the trigger.
“Semiautomatic” does not include a pump, bolt, or lever action
shotgun or rifle.

(i) “Sold as new” refers to a firearm sold by a retailer that has
not previously been purchased for any purpose other than for resale.

Chapter 2. Imposition of Tax

36011. On and after January 1, 2020, an excise tax is hereby
imposed on every retailer upon the sale in this state of a firearm
sold as new at the rate of twenty-five dollars ($25) per firearm.

Chapter 3. Exemptions

36021. There are exempted from the taxes imposed by this
part, the sale of any firearm purchased by any peace officer or by
any law enforcement agency employing that peace officer, for use
in the normal course of employment.

Chapter 4. Collection and Administration

36031. The department shall administer and collect the taxes
imposed by this part pursuant to the Fee Collection Procedures
Law (Part 30 (commencing with Section 55001)). For purposes
of this part, the references in the Fee Collection Procedures Law
to “fee” shall include the taxes imposed by this part and references
to “feepayer” shall mean any person liable for the payment of the
taxes imposed under this part and collected pursuant to that law.
36032. The taxes imposed by this part are due and payable to the department quarterly on or before the last day of the month next succeeding each quarterly period of three months.

36033. On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the department.

CHAPTER 5. DISPOSITION OF PROCEEDS

36041. All amounts required to be paid pursuant to Section 36011 shall be paid to the department in the form of remittances payable to the department, and those revenues, net of refunds and costs of administration, shall be deposited in the CalVIP Firearm Tax Fund, established pursuant to Section 14131 of the Penal Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.