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May 2, 2014

Pleasant Hill Planning Commission
100 Gregory Land
Pleasant Hill, CA 94523
VIA E-MAIL & FAX (925) 682-9327

**Re: Proposed Zoning Amendment- Firearms and Ammunition Sales –
OPPOSITION**

Honorable Members of the Planning Commission:

We write on behalf of our clients, the National Rifle Association (“NRA”) and the California Rifle and Pistol Association (“CRPA”), as well as the hundreds of thousands of their members in California, including members residing in the City of Pleasant Hill. Our clients oppose adoption of the proposed Firearms and Ammunition Sales Ordinance currently being considered by the Commission that concerns the zoning of firearm and ammunition retailers in the City of Pleasant Hill (“Zoning Amendments”).

Members of the Commission are undoubtedly aware of changes the City Council made to Pleasant Hill Municipal Code (“PHMC”) Chapter 9.35 late last year concerning firearm retailers (“Firearms Ordinance”). It is important to understand that the Zoning Amendments before this Commission have only one purpose: to cover the City Council’s illegal actions and mistakes in adopting the original Firearms Ordinance. The Commission should not accommodate the City council’s nefarious objective.

We understand this Commission has been placed in a difficult situation, and is busy diligently reviewing materials presented to it at the April 1 meeting. We write to the Commission now to bring to its attention the true nature of the Zoning Amendments potential effects, what actions can and should be taken by the Commission in the interest of justice, and some additional legal material not previously discussed in prior communications from the public.

I. THE PENDING LAWSUIT CHALLENGING CHAPTER 9.35

It is apparent that the City Attorney and City Council believe that the current lawsuit challenging the Firearm Ordinance¹ will likely be successful in striking that provision down as violating the California Government Code. They now seek a recommendation from the Commission on the Zoning Amendments in an attempt to moot certain issues in the lawsuit. Basically, they are trying to remedy the legal errors they made in passing the original ordinance, which they blatantly ignored beforehand, and hoping to get cover from the Commission for their abuse of process that they thought they would get away with. The Commission should not stand for it.

II. WHAT THE PLANNING COMMISSION CAN DO

Because the constitutionality of the Firearms Ordinance is already being challenged in court, it makes little sense for the Commission to act on the Zoning Amendments at this time. If the ordinance is invalidated as unconstitutional as a whole, it would be a waste of the Commission's time to have considered the proposal in the first place. Moreover, the City Council has not adequately explained the present need for this law. Therefore, the Commission should continue the item until litigation is resolved. By doing so, the Commission will be in a position to make a fully informed decision concerning the legality of such a proposal, based on guidance from a court.

The City Council may attempt to bypass the Planning Commission altogether in pushing this item through. Regardless of whether it has the authority to do so, such an action would expose the City Council's disregard for this Commission's role and for fairness. We urge this Commission to continue the item regardless of any possible action the City Council may take. If, however, members of this Commission decide to weigh in, we strongly urge a unanimous negative recommendation for the following reasons.

III. WHY ANY RECOMMENDATION SHOULD BE A UNANIMOUS NEGATIVE RECOMMENDATION

A unanimous negative recommendation will serve as a strong rebuke of the City Council's usurpation of the process, and will perhaps provide the only method of official protest this Commission can take in regards to the City Council's duplicitous actions. It is clear that the City Council does not respect the Commission's role in this process, and is attempting to use the Commission to remedy its own mistakes, which resulted from its disregard for the law in the first place.

It was clear from the special meeting on April 1 that the honorable members of the Commission were frustrated with the position the City Attorney and City Council placed them in. Residents of Pleasant Hill have already expressed their strong opposition to the proposal. And the materials already

¹ *City Arms East, LLC v. City of Pleasant Hill*, Case MSN13-1922 (Filed 12/23/2013).

provided by the NRA, the CRPA, FFL-Guard, and the National Shooting Sports Foundation, as well as several reputable businesses located in the City of Pleasant Hill, show that both ordinances raise serious legal concerns.

In addition to the points raised in those materials, we invite the Commission to apply the court's reasoning in the case of *Anderson v. City of Hermosa Beach*, 621 F.3d 1051 (2010)² to the provisions at issue in Pleasant Hill. In *Anderson*, Hermosa Beach sought to prohibit tattoo parlors within their municipality just like Pleasant Hill is now attempting to prohibit firearm retailers.

Because tattoos are speech under the First Amendment, the court correctly held that tattoo parlors were also protected by the First Amendment. Courts would undoubtedly view a library or bookstore as protected under the First Amendment. The *Anderson* court then correctly concluded that the ordinance violated the First Amendment because it was "substantially broader than necessary to achieve the City's interest of health and public safety," noting that instead of ensuring tattoo parlors operate in compliance with health and safety codes, the city effectively banned what is already a heavily regulated business.

The analysis for the *Anderson* case applies to the issue here which involves an equally important albeit different constitutionally protected right. Firearm retailers must be afforded protections under the Second Amendment, as a right to keep and bear arms implies a right to buy and sell arms. See *Jackson v. City and County of San Francisco*, No. 12-17803, 2014 WL 1193434 (9th Cir. March 25, 2014) The City Council may have legitimate concerns for public health and safety with regards to firearm retailers, but it has not provided the Planning Commission with any evidence as to why the proposed restrictions are needed, let alone how they are related to furthering public health and safety. The requirements of the proposed zoning ordinance amount to a total ban on firearm retailers altogether. The map only just now supplied to the Commission does not rebut that conclusion as was pointed out during the April 1 meeting.

For these reasons, any recommendation by this Commission to the City Council should be a unanimous negative recommendation.

VI. CONCLUSION

In sum, we strongly urge the Planning Commission to continue the item until the pending litigation is resolved, as to not waste any more time of the Commission on consideration of an

² The decision in this case was given by the Ninth Circuit, which means that it is binding in all states within the Ninth Circuit, including California, and all municipalities within those states, which includes Pleasant Hill.

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ordinance whose legitimacy is still pending in court. If, however, the Commission decides to give a recommendation, we strongly urge a negative recommendation for the above reasons.

As stated in our previous correspondence, should you have any questions or concerns regarding the content of this letter, please feel free to contact us at your convenience.

Sincerely,
Michel & Associates, P.C.

A handwritten signature in black ink, appearing to read 'SAB', with a long horizontal flourish extending to the right.

Sean A. Brady

SAB/ca

cc: Troy Fujimoto, Project Planner
tfujimoto@ci.pleasant-hill.ca.us



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FAX TRANSMITTAL SHEET

TO: City of Pleasant Hill Planning Commission

FIRM: City of Pleasant Hill

FAX NO.: (925) 682-9327

TEL. NO.

FROM: Sean A. Brady

DATE: May 2, 2014

RE: Proposed Zoning Amendment - Firearms and Ammunition Sales - Opposition

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