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February 26, 2013

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Supervisor Bruce McPherson  
COUNTY OF SANTA CRUZ  
BOARD OF SUPERVISORS  
701 Ocean Street, Room 500  
Santa Cruz, CA 95060  
**VIA FAX (831) 454-3262, EMAIL, & U. S. MAIL**

**Re: Opposition to Proposed Ordinance Regulating Firearm Dealers and  
Interim Ordinance to Extend The Temporary Moratorium Thereof**

Dear Members of the Board of Supervisors:

We again 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 in Santa Cruz County, to express our clients' opposition to the proposed ordinance adding Chapter 5.62 to the Santa Cruz County Code Regarding the Regulation of Firearm Dealers ("Proposed Ordinance") that this Board is currently considering for adoption.

In our previous letter to this Board opposing the proposed moratorium, we explained that the U.S. Supreme Court has confirmed that the Second Amendment protects a fundamental, individual right to keep and bear arms from infringement by local governments (*District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 130 S. Ct. 3020 (2010)), and that such right necessarily implies a corresponding right to acquire firearms. (*See Andrews v. State*, 50 Tenn. 165, 178 (1871) (a case repeatedly cited by the Supreme Court in *Heller* holding that the right to keep and bear arms "necessarily includes the right to purchase them . . ."); *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011)). This is an important fact to consider in the legal analysis of any regulation on firearms.

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While firearm dealers are not, as a result of their protected status, exempt from general commercial or zoning regulations (and may conceivably be subjected to additional, narrowly tailored ones, like requiring background checks of employees who handle firearms), they cannot be singled out for exceptionally harsh restrictions and regulations that do not meet heightened scrutiny. But that is exactly what the Proposed Ordinance does. It places several onerous burdens on those wishing to conduct a lawful firearms business under the guise of "regulation." But the provisions of the Proposed Ordinance are hardly related to the furtherance of any governmental interest, let alone necessary to achieve one. *See Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981) (citations omitted) ("when a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest.").

Tellingly, when considering the adoption of a similar ordinance package purporting to regulate firearm dealers, the San Mateo County Board of Supervisors, upon consideration of a letter from our office similar to this one, rejected that package. The San Mateo Board likely understood that "regulations" like the provisions contained in the Proposed Ordinance and Interim Ordinance are replete with legal issues, including but not limited to, conflicts with the preemption doctrine, Second Amendment, and Equal Protection Clause, which conflicts will eventually need to be resolved through litigation. Adopting the Proposed Ordinance will thus subject the County to a lawsuit.

The new area of Second Amendment civil rights jurisprudence is evolving rapidly in the wake of the Supreme Court recognizing an individual Second Amendment right in the *Heller* case. The law, and not mere ideology, supports our positions. The County would be wise to refrain from adopting this Proposed Ordinance and avoid extending the moratorium while this new field of law develops through litigation in other jurisdictions. The County is free to adopt reasonable regulations designed on firearm dealers, such as requiring employee background checks, some security measures, etc. But as the *Fiscal* court admonished: "the goal of any local authority wishing to legislate in the area of gun control should be to accommodate the local interest with the least possible interference with state law . . . Therefore, when it comes to regulating firearms, local governments are well advised to tread lightly." *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 919. (2008).

While anti-Second Amendment-rights groups such as Law Center to Prevent Gun Violence may promise to provide a legal defense of the Proposed Ordinance for the County *pro bono*, if the challengers prevail, the County will still be liable for the challengers' costs and attorneys' fees, which can be significant. Defending its handgun ban ordinance in the *Fiscal* case cost San Francisco roughly \$600,000.00, in addition to the \$380,000.00 it paid to the NRA to reimburse it for its attorney's fees when San Francisco lost. The City of Chicago recently paid \$125,000 to a plaintiff who challenged the constitutionality of that city's ordinance banning people with certain non-violent misdemeanor convictions from possessing firearms in their homes for self-defense in the case of *Gowder v. Chicago*, 11 C 1304 WL 2325826 (N.D. Ill. June 19, 2012). That was following Chicago's payment of approximately \$1.4 million dollars to the NRA and \$400,000 to the Second Amendment Foundation for the *McDonald* case. And, the

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District of Columbia had to pay \$1.1 million to Mr. Heller.<sup>1</sup>

Our clients understand the need to fight the criminal misuse of firearms and gun violence, and have a variety of effective programs available to you upon request. Ones that do not infringe the rights of your residents. We suggest you consider taking our clients up on those programs before delving into highly restrictive and ineffective laws. For, they are truly effective and cost the County nothing, while the same cannot be said for the Proposed Ordinance.

If you have any questions or concerns concerning the content of this correspondence, please feel free to contact us at your convenience.

Sincerely,  
**Michel & Associates, P.C.**



C. D. Michel

CDM/ca

cc: Tess E. Fitzgerald, Clerk of the Board  
COUNTY OF SANTA CRUZ  
701 Ocean Street, Room 500  
Santa Cruz, CA 95060  
VIA FAX (831) 454-2327

Dana McRae, County Counsel  
COUNTY OF SANTA CRUZ  
701 Ocean Street, Room 500  
Santa Cruz, CA 95060  
VIA FAX (831) 454-2115

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<sup>1</sup> It is also worth mentioning that when Alameda County's ban on firearm sales on its property – effectively a ban on gun shows – was challenged, twelve years of litigation and hundreds of thousands of dollars in costs later, Alameda County ultimately interpreted its ordinance to allow gun shows on its property before the Ninth Circuit ruled on the law, mooted the controversy and ending the case. While the court did not award fees to the challengers because it did not rule on the merits, had it ruled in the challengers' favor, they would have sought over \$1 million. *See Nordyke v. King*, 681 F.3d 1041 (9th Cir. 2012) (en banc).



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## IMMEDIATE ATTENTION

### FAX TRANSMITTAL SHEET

**TO:** Tess E. Fitzgerald, Clerk of the Board

**FIRM:** COUNTY OF SANTA CRUZ

**FAX NO.:** (831) 454-2327

**TEL. NO.** (831) 454-2323

**FROM:** C. D. Michel

**DATE:** February 26, 2013

**RE:** **Opposition to Proposed Ordinance Regulating Firearm Dealers and Interim Ordinance to Extend The Temporary Moratorium Thereof**

THIS FAX CONTAINS COVER PAGE PLUS 3 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

### SPECIAL INSTRUCTIONS

Please provide a copy to the Board of Supervisors before today's meeting. Thank you

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## IMMEDIATE ATTENTION

### FAX TRANSMITTAL SHEET

**TO:** BOARD OF SUPERVISORS

**FIRM:** COUNTY OF SANTA CRUZ

**FAX NO.:** (831) 454-3262

**TEL. NO.** (831) 454-2200

**FROM:** C. D. Michel

**DATE:** February 26, 2013

**RE:** **Opposition to Proposed Ordinance Regulating Firearm Dealers and Interim Ordinance to Extend The Temporary Moratorium Thereof**

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## FAX TRANSMITTAL SHEET

**TO:** Dana McRae, County Counsel

**FIRM:** COUNTY OF SANTA CRUZ

**FAX NO.:** (831) 454-2115

**TEL. NO.** (831) 454-2040

**FROM:** C. D. Michel

**DATE:** February 26, 2013

**RE:** Opposition to Proposed Ordinance Regulating Firearm Dealers and Interim Ordinance to Extend The Temporary Moratorium Thereof

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