



PLEASE RESPOND TO:
244 FIFTH AVE., SUITE 1960
NEW YORK, NY 10001
(888) 335-4731 x706

PROGRAM OFFERED BY:

*THE CHIAFULLO GROUP, LLP
ATTORNEYS-AT-LAW*

WRITER'S E-MAIL:
CHRIS@FFLGuard.COM

April 25, 2012

Via Electronic Mail and Facsimile

Councilmembers
City of San Diego
Committee on Budget and Finance
202 C Street
San Diego, CA 92101

Re: City of San Diego's Proposed Fee Increase for Federal Firearms Licensees

Dear Committee Members:

We write on behalf of *FFLGuard*, a cooperative legal program dedicated to representing the interests of its hundreds of federal firearms licensee ("FFL") clients nationwide, including FFLs that operate in the City of San Diego, California, to express concerns about the City of San Diego's current proposal to raise the regulatory fees the City charges to FFLs.

Based on the materials the City released concerning this matter—which we were not able to obtain from the City until late yesterday—it is our understanding that this Committee is poised to recommend that regulatory fees for FFLs in San Diego be increased from \$660 to \$1,755 – nearly tripling the current fee. Such a drastic fee increase is concerning to our members. As such, we are compelled to respectfully inquire on behalf of our affected members as to how the City arrived at that figure, since the materials provided by the City do not explain the bases for the fee increase.

We do not dispute the City’s ability to regulate FFLs in some regards, and to recover its legitimate costs in doing so via fees. We do, however, respectfully point out that the amount of such fees are limited by California law and constitutional principles. Specifically, “[i]t is settled that a municipality under the police power may impose a license fee for the purpose of regulation, not revenue, where the fee constitutes an amount necessary to ‘legitimately assist in regulation and ... not exceed the necessary or probable expense of issuing the license and of inspecting and regulating the ... subject that it covers.’” *United Bus. Com. v. City of San Diego*, 91 Cal. App. 3d 156, 165, 154 Cal. Rptr. 263 (Ct. App. 1979). And such regulatory fees must also pass muster under Proposition 26 (Cal Const art XIIC, §1(e).) There is also a federal limitation on such fees. *See Murdock v. Pennsylvania*, 319 U.S. 105 (1943), wherein the U.S. Supreme Court explained that when constitutionally protected activity is being regulated, the government may impose a fee only “as a regulatory measure and calculated to defray the expenses of policing the activities in question.” Firearm transfers are clearly protected by the Second Amendment,¹ and therefore fees thereon must comply with the standards set out in *Murdock*.

Because at this point the City has not provided any information explaining its bases for the significant fee increase on FFLs, it is impossible for us to determine whether said increase is legally justifiable or unlawfully exorbitant. Accordingly, we respectfully request that this Committee postpone taking any action on the proposed FFL fee increase – to the extent it intends on taking any action at its April 25 hearing – until interested parties such as *FFLGuard* are able to examine the reports purportedly being presented at that hearing and to provide their input on the propriety of such fee increases.

A postponement of this Committee’s decision for at least 14 days does not seem an unreasonable request. This is especially true in light of the fact that we have communicated with several parties interested in this matter, all of whom, like us, were unable to locate materials relevant to the City’s proposed fee increases until April 24. And then, the materials obtained were scant on information; in fact, they were completely devoid of any information detailing the

¹ *See Ezell v. City of Chicago*, No. 10-3525, 2011 WL 2623511, at *14 (7th Cir. July 6, 2011).

need for the fee increases. Whether that was the result of our oversight or the City's, the need for more time for interested parties to consider the proposal nevertheless remains and is a reasonable request.

For all of the foregoing reasons, we respectfully request that the City give San Diego FFLs an opportunity to review materials the City is relying on in raising fees on FFLs and to provide their input. If you have any questions or concerns concerning the content of this correspondence, please feel free to contact me at your convenience.

Very truly yours,



By: _____
Christopher M. Chiafullo
for The Chiafullo Group, LLP
FFLGuard
National Coordinating Counsel and
Director of Special Operations

cc: Councilmember Todd Gloria, Chair, via facsimile @ (619) 585-1481 and email @ toddgloria@sandiego.gov
Councilmember Carl DeMaio, Vice Chair, via facsimile @ (619) 238-0915 and email @ carldemaio@sandiego.gov
Council President Pro Tem Kevin Falconer, via facsimile @ (619) 236-6996 and email @ kevinfalconer@sandiego.gov
Councilmember David Alvarez, via facsimile @ (619) 231-7918 and email @ davidalvarez@sandiego.gov
Councilmember Marti Emerald, via facsimile @ (619) 238-1360 and email @ martiemerald@sandiego.gov
City Attorney, Jan Goldsmith, via facsimile @ (619) 236-7215 and email @ cityattorney@sandiego.gov
Council Committee Consultant Pamela Ison, via email @ pison@sandiego.gov