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July 6, 2016

Mayor Robert Moon  
Mayor Pro Tem Chris Mills  
Councilmember Ginny Foat  
Councilmember Geoff Kors  
Councilmember J.R. Roberts  
Executive Assistant Jennifer Nelson  
CITY HALL  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

**Re: Ordinance Amending Chapter 11.16 of the Palm Springs Municipal Code Relating to Firearms - OPPOSITION**

Dear Honorable Members of the Palm Springs City Council,

We write on behalf of our clients, the National Rifle Association of America and the California Rifle and Pistol Association, as well as the hundreds of thousands of their members in California, including those members residing in the City of Palm Springs.

Our clients oppose adoption of the proposed ordinance amending Chapter 11.16 of the Palm Springs Municipal Code as related to firearms. The proposal seeks to (1) require the reporting of lost or stolen firearms, (2) require the safe storage of firearms in the home, (3) prohibit the possession of firearm magazines capable of holding more than 10 rounds, (4) require ammunition sales to be recorded at the time of purchase, and (5) prohibit unsecured firearms and ammunition in vehicles.

We ask the City Council to reconsider its support for the proposal because it is preempted by state law, duplicative of recently enacted state legislation, raises serious constitutional concerns under the Second Amendment, Fifth Amendment, and Equal Protection Clause of the United States Constitution, and will expose the city to costly and time consuming litigation, all while failing to promote public safety.

**I. MANY OF THE KEY PROVISIONS OF THE PROPOSED ORDINANCE ARE PREEMPTED AND UNENFORCEABLE BECAUSE THEY DUPLICATE OR CONFLICT WITH STATE LAW**

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.<sup>1</sup> A local law “*duplicates* state law when it is “coextensive” with state law.”<sup>2</sup> A local law “*contradicts* state law when it is inimical to or cannot be reconciled with state law.”<sup>3</sup>

On Friday, July 1, 2016, California Governor Jerry Brown signed a number of firearm-related bills into law. These include Senate Bill 1235 (De Leon) - Ammunition (“SB 1235”), and Senate Bill 1446 (Hancock) - Firearms: Magazine Capacity (“SB 1446”). SB 1235 establishes a comprehensive ammunition sales registration and licensing scheme that will apply to all ammunition sales in the state of California. SB 1446 bans the possession magazines capable of holding more than 10 rounds.

With the passage of these bills, sections 11.16.070 (barring possession of magazines capable of holding more than 10 rounds) and 11.16.080 (requiring the reporting of ammunition sales) of the proposed ordinance are now duplicative of and/or conflict with state law. They are thus preempted. Because enacting either provision of the proposed ordinance will only serve to expose the city to costly and time consuming litigation, we urge the City Council to reconsider its support for such an ordinance.

As the California Court of Appeals has made clear, “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[,]” and thus, “when it comes to regulating firearms, local governments are well advised to tread lightly.”<sup>4</sup> Jurisdictions failing to follow this advice have subjected themselves to expensive and time consuming litigation, contrary to what the City Council Staff Report states.

For example, the City of Sunnyvale was sued in 2013 for enacting an ordinance that, among its other provisions, prohibited the possession of lawfully owned magazines capable of holding more than 10 rounds.<sup>5</sup> Although the Ninth Circuit upheld a denial for a motion for preliminary injunction, the case has yet to be resolved. And just last year, the City of Los Angeles was sued for enacting a nearly identical ordinance relating to the possession of magazines capable of holding more than 10 rounds because such an ordinance is preempted by state law.

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<sup>1</sup> See Cal. Const., art. XI, § 7; *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1067 (2007); *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 903-04 (2008).

<sup>2</sup> *O’Connell*, 41 Cal.4th at 1068.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 919-20.

<sup>5</sup> *Fyock v. Sunnyvale*, Case No. 13-05807 (N.D. Cal. 2013).

## **II. GOVERNOR BROWN RECENTLY VETOED A PROPOSED BILL REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS BECAUSE SUCH A LAW DOES NOT PROMOTE PUBLIC SAFETY**

While he signed SB 1235 and SB 1446, Governor Brown vetoed several proposals because they would not promote public safety or further any law enforcement efforts to prevent crime. One such bill was Senate Bill 894 (Jackson) - Firearms: Lost or Stolen: Reports (“SB 894”), which would require every person to report the theft or loss of a firearm to a local law enforcement agency within 5 days of the time they knew or reasonably should have known that the firearm had been stolen or lost.

In his veto message of SB 894,<sup>6</sup> Governor Brown stated that he “did not believe that a measure of this type would help identify gun traffickers or enable law enforcement to disarm people prohibited from having guns.” Governor Brown also noted “responsible people report the loss of theft of a firearm and irresponsible people do not; it is not likely that this [proposed law] would change that.”

As a result, the City of Palm Springs should carefully consider the intended goals of the proposed ordinance. By mandating the reporting of lost or stolen firearms, otherwise innocent and responsible citizens may be deterred from reporting the theft or loss of a firearm should they be subject to potential prosecution simply because they may have failed to make the report within the specified time.

## **III. LAW ENFORCEMENT WIDELY OPPOSE SIMILAR MEASURES**

Setting the above aside, law enforcement professionals are opposed to measures identical to those contained in the proposed ordinance. In the case of the Los Angeles Ordinance which is now facing a legal challenge, the lead plaintiffs are composed of over two dozen county sheriffs.<sup>7</sup> Many of the ordinance’s proposals are contained in a proposed ballot initiative that will be included in the November general election.<sup>8</sup> But not a single law enforcement agency or organization has publicly supported this initiative. In fact, the Association of Deputy District Attorneys,<sup>9</sup> the California State Sheriffs’ Association,<sup>10</sup> the California Fish and Game Wardens’ Association,<sup>11</sup> and Los Angeles

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<sup>6</sup> A copy of Governor Brown’s veto letter for SB 894 can be viewed online at [https://www.gov.ca.gov/docs/SB\\_894\\_Veto\\_Message.pdf](https://www.gov.ca.gov/docs/SB_894_Veto_Message.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> The initiative, titled by its proponents as the “Safety for All Act of 2016,” has just recently qualified for the November 2016 ballot.

<sup>9</sup> See [http://stoptheammograb.com/images/ADDA\\_Letter\\_to\\_Newsom.pdf](http://stoptheammograb.com/images/ADDA_Letter_to_Newsom.pdf).

<sup>10</sup> See <http://stoptheammograb.com/images/CSSALetterreOpposeSafetyforAllActof2016.pdf>.

<sup>11</sup> See <https://www.facebook.com/CACFCL/photos/a.456595907859437.1073741828.445776255608069/467534206765607/?type=3&fref=nf>.

County District Attorney Steve Cooley (Ret.)<sup>12</sup> are just a handful of the growing number of law enforcement groups opposing the initiative as it would do nothing to promote public safety or law enforcement efforts to deter crime.

#### IV. CONCLUSION

Our clients understand the need to combat the criminal misuse of firearms, and they have a variety of effective programs for doing so available to the City upon request. These programs do not overburden responsible business owners or flout the constitutional guarantees of law-abiding citizens. We ask the City Council to consider implementing such programs before pursuing any action on this proposal that targets otherwise lawful firearm businesses who are the purveyors of constitutional rights and their law-abiding customers. For these reasons, we strongly encourage the City Council not to adopt the Ordinance.

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

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



Matthew Cubeiro

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<sup>12</sup> See [http://stoptheammograb.com/images/Coalition\\_Letter-March\\_28.pdf](http://stoptheammograb.com/images/Coalition_Letter-March_28.pdf).