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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

Honorable City Council Members,

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. As currently drafted, the proposal seeks to: (1) require the reporting of lost or stolen firearms; (2) mandate the locked-storage of firearms in the home; and, (3) prohibit unsecured firearms and ammunition in vehicles.

We ask the City Council to carefully consider the intended objectives of the proposed ordinance, as many of its provisions are generally unenforceable until after the fact. What's more, the ordinance raises serious constitutional concerns, and it will actually be detrimental to its intended objective while simultaneously failing to promote public safety.

I. REQUIRING INDIVIDUALS TO REPORT THE THEFT OR LOSS OF A FIREARM WITHIN 48 HOURS IS UNENFORCEABLE AND WILL ONLY RESULT IN FEWER REPORTS TO POLICE

On its face, a requirement that gun owners report the theft or loss of a firearm appears to be sound public policy. But in reality, such a requirement conflicts with the Fifth Amendment and will only result in individuals being *less likely* to report to police the theft or loss of a firearm, thereby obstructing the ordinance's purported goals.

The Fifth Amendment to the United States Constitution reads “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”¹ As a bedrock of our criminal justice system, the amendment prohibits police, prosecutors, and judges from requiring individuals to provide evidence or testimony that could result in potential criminal charges against them. The proposed ordinance, however, completely ignores these protections.

For example, if a person prohibited from possessing firearms nonetheless possesses a firearm illegally, they can be prosecuted for that crime. But if the firearm is ever lost or stolen from that same prohibited person, the Fifth Amendment prohibits that person from being prosecuted for failing to incriminate themselves by not reporting the firearm as lost or stolen.

Given these enforcement difficulties, other jurisdictions considering similar ordinances have rejected them. Recently, the Sacramento Police Department reviewed identical Oakland, San Francisco, Berkeley, and Alameda County reporting requirements, only to discover that not a single investigation, arrest, or conviction had taken place. This complete lack of enforcement clearly illustrates how such a requirement will not further any purported objective. As one Assistant District Attorney for the County of San Francisco stated, “I do not believe [the ordinance] will expand my ability to prosecute crime.”

What's more, law-abiding gun owners already report stolen or lost firearms to police. Doing so protects them from becoming a suspect in any potential criminal investigation involving the misuse of the firearm, and increases the chances that the firearm is returned to its lawful owner if ever recovered. As a result, law-abiding individuals already have more than enough incentive to report the theft or loss of a firearm.

But by placing criminal and civil penalties for the failure to report the theft or loss of a firearm, the ordinances forces crime victims to decline to cooperate with police for fear of prosecution. This is because many gun owners may not be aware of the 48-hour legal requirement, or are otherwise unsure at exactly which point they “knew or reasonably should have known” the firearm was lost or stolen. In these situations, lawyers will advise their clients to remain silent while immunity is negotiated, rather than quickly supplying police with the necessary information to properly and promptly investigate the crime, which may be time sensitive.

¹ U.S. Const. amend. V.

II. EVERY PROPOSED CALIFORNIA LAW REQUIRING THE REPORTING OF THE THEFT OR LOSS OF A FIREARM HAS BEEN VETOED—AND FOR GOOD REASON

In July of this year, Governor Jerry Brown vetoed Senate Bill 894, which would require every person to report the theft or loss of a firearm to a local law enforcement agency within five days of the time they knew or reasonably should have known that the firearm had been stolen or lost.

In his veto message, 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,” and that “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.”²

In addition to vetoing Senate Bill 894, Governor Brown has vetoed every identical bill that has come before him. In 2013, he vetoed Senate Bill 299, stating that he “was not convinced that criminalizing the failure to report a lost or stolen firearm would improve identification of gun traffickers or help law enforcement disarm people prohibited from possessing guns.”³ And in 2012, he vetoed Senate Bill 1366 with a similar message.⁴

Even Brown’s predecessor, Arnold Schwarzenegger, vetoed an identical bill in 2006, stating that “the ambiguous manner in which this bill was written would make compliance with the law confusing for legitimate gun-owners and could result in cases where law-abiding citizens face criminal penalties simply because they were the victim of a crime, which is particularly troubling given the unproven results of other jurisdictions in California that have passed similar measures.”⁵

The recurring theme in all of these veto messages is this—a mandatory theft/loss reporting requirement will *not* achieve a higher rate of reporting, and will instead be *detrimental* to this objective. As a result, we strongly urge the City of Palm Springs to reconsider its proposal and seek an alternative that will educate gun owners on the benefits associated with reporting the loss or theft of a firearm without subjecting them to criminal or civil penalties for failing to do so.

² 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.

³ A copy of Governor Brown’s veto letter for SB 299 can be viewed online at https://www.gov.ca.gov/docs/SB_299_2013_Veto_Message.pdf.

⁴ A copy of Governor Brown’s veto letter for SB 1366 can be viewed online at https://www.gov.ca.gov/docs/SB_1366_Veto_Message.pdf.

⁵ A copy of Governor Shwarzenegger’s veto letter for SB 59 can be viewed online at ftp://leginfo.public.ca.gov/pub/05-06/bill/sen/sb_0051-0100/sb_59_vt_20060929.html.

III. THE LOCKED-STORAGE REQUIREMENTS WILL NOT PREVENT THE UNAUTHORIZED ACCESS OF FIREARMS AND WILL BE DETRIMENTAL TO THE SAFETY OF PALM SPRINGS RESIDENTS

As a threshold matter, the City of Palm Springs cannot enforce the proposed locked storage requirements without running afoul of the Fourth Amendment, which provides for “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.”⁶ This prevents the City from inspecting how individuals are storing their firearms in their home or vehicle without first having established probable cause that they are in violation of the ordinance. Tellingly, although some California cities have similar ordinances in effect, we are unaware of a single instance of enforcement.

What’s more, California already provides a comprehensive series of laws regarding the criminal storage of firearms.⁷ Among these provisions are restrictions against storing a firearm in a manner that allows a child to gain unauthorized access, with varying degrees of punishment depending on the result of the child’s access (such as if the child injured themselves or another).⁸ These laws specifically provide for an exception to the restriction if the firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.⁹ Finally, California law also requires any person who owns a firearm, and who knows or has reason to know that another person residing with them is prohibited from possessing firearms, to store the firearm in a locked container or keep the firearm disabled with a firearm safety device.¹⁰

As you can see, California law already addresses many aspects of the proposed ordinance’s provisions. But California law is written in a manner allowing individuals to choose, based on their particular needs and circumstances, how best to store their firearms. The ordinance’s blanket approach fails to consider the needs of many Palm Springs residents who may wish to have immediate access to their firearms for the lawful purpose of self-defense and are otherwise unable to quickly access their firearms in an emergency.

IV. CONCLUSION

As we stated in our previous letter, our clients have a number of programs available to the City upon request that will promote public safety and not flout the constitutional guarantees of law-abiding

⁶ U.S. Const. amend. IV.

⁷ See Cal. Penal Code §§ 25000-25225.

⁸ *Id.*

⁹ Cal. Penal Code § 25205(b).

¹⁰ Cal. Penal Code § 25135.

citizens.¹¹ These programs include firearm safety training,¹² the Eddie Eagle GunSafe® Program,¹³ the National School Shield Program,¹⁴ and youth specific programs,¹⁵ all of which have proven to reduce accidental gun deaths and promote public safety more than any gun-control law ever will. Instead of implementing laws that will be detrimental to the City's objectives and otherwise ineffective, we ask the City to consider such alternatives.

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

¹¹ <https://explore.nra.org/interests/safety-and-education/>.

¹² <https://explore.nra.org/interests/firearms-training/>. With roughly 1 million people attending NRA training courses annually, the NRA is recognized nationally as the Gold Standard for firearm safety training.

¹³ <https://eddieeagle.nra.org/>. The Eddie Eagle GunSafe® program is a gun accident prevention program that seeks to help parents, law enforcement, community groups and educators navigate a topic paramount to our children's safety, teaching children when they see a gun to "Stop! Don't touch! Leave the Area, and tell an adult."

¹⁴ <https://www.nationalschoolshield.org/>. The National School Shield program is committed to addressing the many facets of school security, including best practices in security infrastructure, technology, personnel, training, and policy.

¹⁵ <http://youth.nra.org/>.