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October 4, 2016

Mayor Greg Lyman
Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges
Councilmember Mark Friedman
Councilmember Gabe Quinto
EL CERRITO CITY COUNCIL
El Cerrito City Hall
10890 San Pablo Ave.
El Cerrito, CA 94530
citycouncil@ci.el-cerrito.ca.us
VIA E-Mail and FAX: (510) 215-4379

Re: Demand to Repeal \$961 Concealed Weapons Permit Fee

Honorable Mayor and City Council:

We write on behalf of our clients, the National Rifle Association and the California Rifle & Pistol Association, as well as the hundreds of thousands of their members in California, many residing within your jurisdiction, to demand the repeal of El Cerrito's \$961 concealed weapons permit fee as listed in the El Cerrito "Master Fee Schedule FY 2016-17."¹

According to the City's website, El Cerrito Municipal Code section 4.01.010 states that "prior to July 1st of each year, the City council shall consider and adopt the schedule of all general and special fees and charges to be known as the master fee schedule."²

As explained in greater detail below, the City's established fee for concealed weapon permits, as set forth in the City's Master Fee Schedule, violates the \$100 cap established by the California Penal Code and is thus invalid and unenforceable. We respectfully request the City to initiate the repeal process or to inform us of its intentions within 30 days.

¹ Available online at <http://www.el-cerrito.org/DocumentCenter/View/3779>.

² See <http://www.el-cerrito.org/index.aspx?nid=234>.

I. LEGISLATIVE AUTHORITY GRANTED TO EL CERRITO TO CHARGE LOCAL PROCESSING FEES RELATING TO CONCEALED WEAPON PERMIT APPLICATIONS

California has established a comprehensive and complex regulatory scheme regarding the issuance of licenses to carry a pistol, revolver, or other firearm capable of being concealed upon one's person.³ Individuals seeking such a license may apply either to the Sheriff of the County in which they reside, or to their respective Chief of Police of the City or City and County in which their residence is located.⁴ To qualify for a license, individuals applying to the Chief of Police must demonstrate: (1) good moral character; (2) good cause for the issuance of the license; (3) residency; and, (4) completion of a mandatory 16-hour training course.⁵ Any policies and procedures relating to these requirements must be published by the issuing authority.⁶

To begin the application process, individuals must submit the proper application form to their respective licensing authority. The form itself is uniform throughout the state as prescribed by the California Attorney General,⁷ and applicants cannot be required to complete any additional forms or provide any information other than that necessary to complete the standard application form.⁸

The Penal Code allows cities to charge a fee equal to the actual costs for processing the application.⁹ ***But in no case is this fee to exceed one hundred dollars.***¹⁰ Only the first 20 percent of this "local fee" may be collected upon filing the initial application (up to \$20).¹¹ What's more, once this local fee has been established, it may only be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.¹² Given these restrictions, El Cerrito's \$961 fee for concealed weapon permits as set forth by the City's Master Fee Schedule clearly violates the \$100 statutory cap and is unenforceable.

³ See Cal. Penal Code §§ 26150-26225, *see also* Cal. Penal Code § 16530 (defining "firearm capable of being concealed upon the person").

⁴ Cal. Penal Code §§ 26150-26155.

⁵ Cal. Penal Code § 26155(a)(1-4).

⁶ Cal. Penal Code § 26160.

⁷ Cal. Penal Code § 26175(a)(1).

⁸ Cal. Penal Code § 26175(g).

⁹ Cal. Penal Code § 26190(b)(1) (excluding the required fingerprinting and training costs).

¹⁰ *Id.*

¹¹ Cal. Penal Code § 26190(b)(2) (the remaining balance can only be collected upon issuance of the license).

¹² Cal. Penal Code § 26190(d). *See also California Consumer Price Index*, State of California, Department of Industrial Relations, <http://www.dir.ca.gov/OPRL/capriceindex.htm> (last visited Sept. 27, 2016).

II. GOVERNOR JERRY BROWN'S RECENT VETO OF ASSEMBLY BILL NO. 450

This year, the California Legislature passed Assembly Bill No. 450, which would have removed the statutory \$100 cap set forth under Penal Code section 26190.¹³ But on Monday, September 26, Governor Jerry Brown vetoed the proposed legislation, stating that "[t]his bill was spurred by a local dispute in one county," and that he was "unaware of a larger problem that merits a statewide change at this time."¹⁴ As a result, the \$100 local licensing fee cap remains in effect and prohibits El Cerrito from charging concealed weapon permit applicants any fee in excess of this amount.

III. CONCLUSION

Our clients and their members respectfully urge the City of El Cerrito to repeal the illegal fee currently charged for concealed weapon permits, and to direct the Police Department to publish its policies regarding the issuance of concealed weapon permits as required by the California Penal Code. Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,
Michel & Associates, P.C.



Matthew D. Cubeiro

¹³ See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB450.

¹⁴ A copy of the Governor's veto message for Assembly Bill No. 450 can be viewed online at https://www.gov.ca.gov/docs/AB_450_Veto_Message.pdf.